UNIVERSITY OF PRINCE EDWARD ISLAND

ARCHIPELAGIC MATTERS:
THE CASE OF THE UNITED NATIONS CONVENTION ON THE LAW OF THE SEA AND THE REPUBLIC OF THE PHILIPPINES

by

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Abstract

The United Nations Convention on the Law of the Sea (UNCLOS) contained a specific section for “Archipelagic States” (Part IV) which are given many rights under the archipelagic regime including, if desired, to designate archipelagic sea lanes (ASLs) through their archipelagic waters. While designation of ASLs is optional, regardless of ASL status, the right of archipelagic sea lane passage (ASLP) for all maritime users is guaranteed. This thesis examines the case of the Republic of the Philippines in designating ASLs and the influences impacting this process at the state and international levels.

This thesis argues that the process of adoption of archipelagic sea lanes by mid-ocean archipelagic states is one which favours the maritime powers over the archipelagic states. Further, in relation to the Philippine case, the efforts of the Republic of the Philippines in repeating some actions undertaken by Indonesia during its case, will strengthen the international system bias and end in a result which will be the by-product of interests other than that of the Philippine state.

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Please note that all correspondences, legislation and facts are current as of September 30, 2012. I humbly submit this research to the world and note any factual errors or omissions are my responsibility and solely my own.

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List of Abbreviations

ASEAN	Association of Southeast Asian Nations
ASL	Archipelagic Sea Lane
ASLP	Archipelagic Sea Lane Passage
AW	Archipelagic Waters
EEZ	Economic Exclusive Zone
GPASL	General Provisions of the Adoption, Designation, and Substitution of Archipelagic Sea Lanes
HB	House Bill
HBN	House Bill Number
IMO	International Maritime Organization
ITLOS	International Tribunal for the Law of the Sea
IW	Internal Waters
KIG	Kalayaan Island Group (Philippines)
LEDAC	Legislative Executive Development Advisory Council (Philippines)
MSC	Maritime Safety Committee (International Maritime Organization)
NMP	National Marine Policy (Philippines)
PRC	People's Republic of China
PSSA	Particularly Sensitive Sea Area
SB	Senate Bill
SBN	Senate Bill Number
TW	Territorial Waters
UN	United Nations
UNCLOS	United Nations Convention on Law of the Sea, 1982

UNCLOS I	First United Nations Conference on the Law of the Sea, Geneva, 1958
UNCLOS II	Second United Nations Conference on the Law of the Sea, Geneva, 1960
UNCLOS III	Third United Nations Conference on the Law of the Sea, 1973-1982

Chapter One: Introduction

In the field of island studies, the archipelago remains one of the least examined metageographical concepts.

(Lewis & Wigen, 1997, quoted in Stratford et al, 2011: 118)

1.1: GENERAL INTRODUCTION

The field of island studies has been decoded as "the critical, inter- and pluri-disciplinary study of islands on their own terms" (Baldacchino, 2007: 16). In the course of my graduate studies, I have come to know many islands of the world. My knowledge of said islands is as varied and different as the islands themselves. I have been introduced to islands of numerous shapes and sizes which can be found in all corners of the planet. One particular type of island, or rather, I should say islands, became of great interest to me. What I am referring to are the islands known as archipelagos.

What is an archipelago? As explained by Stratford et al. (2011: 120):

> The etymology of archipelago provided in the Oxford English Dictionary indicates that the word was "evidently a true Italian compound" of arch (from the Greek signifying 'original', 'principal') and pelago (deep, abyss, sea). The coinage was probably suggested by the medieval Latin name of the Ægean Sea, Egeopelagus. The earliest usage of the word given by the OED occurs in a Treaty of 30 June 1268, between the Venetians and Byzantine Emperor Michael Palaeologus. What may be the first use, then, occurs in the context of the Byzantine empire's reclaimed power in the Ægean. Later uses in the early modern period indicate that the word continued to be used in its specific reference to the Ægean but was also gaining currency as a more general term for a group of islands in the sea.

Archipelagos are a geographically clustered group of islands which can vary in many ways which can include geologic composition, the number and size of islands, and the spatial geography of the islands. The geo-political aspects of archipelagos also range from sovereign country to sub-national jurisdiction of a land-locked or coastal state, or even a politically split archipelago, such as the Comoro archipelago, which is split between the sovereign state of Comoros and the French overseas department of Mayotte.

Webster's Dictionary defines an archipelago as "a group of islands" (http://www.merriam-webster.com/dictionary/archipelago). Turning next to the Oxford Dictionary, it terms an archipelago as "a sea or stretch of water having many islands" (http://oxforddictionaries.com/definition/english/archipelago?q=archipelago). This definition has been noted by one scholar as "first emphasiz[ing] the sea, which is interspersed with islands" (Andrew, 1978: 47).

The contrast between these two dictionary definitions of archipelagos is very telling. In the field of Island Studies, Epali Hau'ofa is recognized as the first to advance the concept of distinguishing between "islands in a far sea" and "a sea of islands" noting:

> The first emphasises dry surfaces in a vast ocean far from the centres of power. When you focus this way you stress the smallness and remoteness of the islands. The second is a more holistic perspective in which things are seen in the totality of their relationships. (1993: 7)

Hau'ofa was a Pacific Islander who spoke of the transition of the historical connotation of Oceania as reflected in his two above noted terms:

> It was continental men, namely Europeans, on entering the Pacific after crossing huge expanses of ocean, who introduced the view of 'islands in a far sea'. From

> this perspective the islands are tiny, isolated dots in a vast ocean. Later on it was continental men, Europeans and Americans, who drew imaginary lines across the sea, making the colonial boundaries that, for the first time, confined ocean peoples to tiny spaces. These are the boundaries that today define the island states and territories of the Pacific. (1993: 7)

His insights remind us that archipelagos are more than geographic constructions. Stratford et al. theorize that "perhaps, at least as conceptual manifestations, archipelagos are fluid cultural processes, sites of abstract and material relations of movement and rest, dependent on changing conditions of articulation or connection" (2011: 122). They also advance the idea that within archipelagos the duality of both "theoretical and empirical archipelagic relations exist[s]" (Stratford et al., 2011: 125).

The specific archipelagos that my research deals with are the sovereign mid-ocean archipelagic states. These states are composed solely of the islands which make up their respective archipelagos. LaFlamme (1983: 361) identified four major attributes which truly distinguish an archipelagic state from other states: a large number of islands; the consideration that the waters surrounding its islands are within its boundaries and an integral part of its heritage; the islands (with few exceptions) are small and economically underdeveloped; and a centrifugal tendency. This tendency invokes the characteristics of many societies such as, the centralization of critical populace mass, economic activities and power of the dominant island(s) and the trickle down dependency of the smaller, less developed islands. Fitzmaurice (1959: 88, quoted in LaFlamme, 1983: 361) states that "the real essence of an archipelago is the concept of a self-contained and relatively compact group, not a loose congeries of islands dotted over a large extent of sea."

1.2: BACKGROUND

The United Nations Convention on the Law of the Sea (UNCLOS), 1982 identifies mid-ocean archipelagic states as a distinct category which are given the power, if desired, to designate sea lanes through their archipelagic waters. The first goal of this thesis is to start a discussion that examines the practice of archipelagic sea lane designation by these states, including popular responses, through a specific "island studies" lens. The second research goal is to demonstrate the inter-disciplinary nature of mid-ocean archipelagic states and their actions around designating (or not) archipelagic sea lanes (ASLs).

1.3: THESIS OBJECTIVES

My first thesis objective is to expand the knowledge of the area of mid-ocean archipelagic states and the rights afforded them under Part IV of the United Nations Convention on the Law of the Sea (UNCLOS). Given that this Convention is merely thirty years old and came into force in 1994, this field of study is relatively new. Furthermore, as only one of the twenty-two mid-ocean archipelagic states has gone through the archipelagic sea lane submission process, there is much to learn from this experience with an eye to the future.

My second thesis objective is to research and understand how the Law of the Sea processes are unfolding for mid-ocean archipelagic states. It is noteworthy that this research will have much academic importance as well as practical application to assist other states in their deliberations of future policy decisions. Indeed, there is a lack of formal research on this topic, including from the specific comparative island studies perspective.

1.4: THESIS SIGNIFICANCE

The short term significance of my research for the field of Island Studies is considerable. The Philippines are a timely and interesting case as they tackle this issue. There have been many developments in the last number of years. The existing pertinent academic literature in this sub-field is rather limited and consists mostly of contributions by legal academics, and other very important contributors who are involved in the ASL process (legislators, government consulted experts, public servants), and are writing of their own respective countries. I feel that one long-term, significant contribution for Island Studies is critical academic analysis to this issue and offer this from a comparative point of view drawing upon the inter-disciplinary nature of Island Studies and of this very issue itself.

1.5: RESEARCH QUESTIONS

My research questions developed from the previously stated research goals and objectives are:

1. Will the Philippines enact ASLs?
2. How specifically has the Indonesian experience influenced the Philippines?
3. What additional factors are influencing the Philippines?
4. What are the implications of these findings on the Philippines?
5. What are the implications of these findings on other mid-ocean archipelagic states?

Thesis Statement

Hence, drawing upon these research questions, I propose that the actions and decisions of the Republic of the Philippines surrounding a possible archipelagic sea lane submission to the International Maritime Organization (IMO) have been influenced by many variables, including the experience and results of Indonesia's archipelagic sea lane submission to the same IMO.

This thesis is driven by a real interest in the maritime aspects of islands. The linkages between islanders, the land, and the sea have been noted by many authors and academics across a number of disciplines including island studies throughout history. These linkages are further strengthened when one looks to the case of archipelagos.

Additionally, the maritime frontier is the sole frontier, save outer space, which is free of jurisdictional claim (though many are pending) and set to be discovered. The high seas are an ever evolving journey through international relations, diplomacy, environmental concerns, resource management, and many other issues. The sum of these parts is the fact that islands are playing a central role in the maritime frontier and shall continue to do so. Questions abound as to the future of the high seas in the face of globalization. The short histories of UNCLOS, 1982; post-colonial sovereign islands; and a multitude of other dynamics find us at a time when the stakes are quite high and much is left to be decided.

I was drawn to the maritime law aspect of islands when looking at the future of the Canadian Arctic Archipelago. Working deeper into the Law of the Sea, I discovered the stand-alone status of this archipelago (Article 234), as well as an entire dedicated

section on archipelagic states (Part IV). This thought process evolved further towards the unique case of mid-ocean archipelagic states as laid out in Part IV.

Looking more closely at the subject, I was intrigued to find the challenges long faced by many archipelagic states, including two of the most populous island states in the world (Indonesia and the Philippines). It struck me as a very curious issue that such heavily populated "large" archipelagic states would struggle on the international stage to have their voices heard, and their views accepted.

These are the central reasons as to why I chose this topic. I feel that it is a very important and timely area of research for the field of island studies.

1.6: THEORETICAL APPROACH

I next consulted various social science methodology texts to determine which methods and designs best suited my research questions. Yin (2003: 6) writes that "how" and "why" research questions lend themselves to case study research, owing to the fact that "such questions deal with operational links needing to be traced over time."

As Yin (2003: 1) notes, "[a]s a research strategy, the case study is used in many situations to contribute to our knowledge of individual, group, organizational, social, political, and related phenomena." Hakim (1987: 61) identifies the case study as "the social research equivalent of the spotlight or the microscope; its value depends crucially on how well the study is focused." Punch (1998: 150, quoted in Silverman, 2010: 138) states:

> The basic idea is that one case (or perhaps a small number of cases) will be studied in detail, using whatever methods seem appropriate. While there may be a variety of specific purposes and research questions, the general objective is to develop as full an understanding of that case as possible.

Additionally, Yin (2003: 14) highlights the case study approach as "an all-encompassing method – covering the logic of design, data collection techniques, and specific approaches to data analysis." Hakim (1987) points out that by design, case studies are flexible and demand a wider range of research skills from the researcher in collecting and analysing the data.

This research is an explanatory case study which explains the hows and whys when it comes to the Philippine case of the archipelagic sea lanes issue. This single case is the most appropriate design given the recent developments surrounding ASL submission in the Philippines. The last few years have seen the Republic of the Philippines take noteworthy actions in both policy and legislation as it relates to UNCLOS.

This study into influence from the Indonesian case strengthens the Philippine analysis, due to Indonesia being the only mid-ocean archipelagic state to proceed with ASL submission to the IMO. Furthermore, to a point both states share similarities of political geography, regional histories, regional (international) influences from state and intergovernmental sources, and a shared, long standing advocacy of the archipelagic concept.

I carefully selected this explanatory case study because it was the most appropriate and timely case of archipelagic state action under UNCLOS, Part IV (ASL submission). The Indonesian and Philippine states have been the most visible, most

vocal, and most engaged archipelagic states in advocating for recognition within international maritime law of the concept of the wholeness of an archipelago. Indonesia is the only state to have gone through the ASL process. The Philippines have long been a leading voice for the archipelagic concept and have had several recent developments, raising the possibility of an ASL designation and submission in the near future.

I chose to implement the case study approach in my research because I feel it is the most appropriate theoretical approach to fully research, analyse, and explain the Philippine state position and to identify linkages from the Indonesian case which are influencing the Philippines. Additionally, these linkages have the possibility of showing trends that can be applied to other mid-ocean archipelagic state cases in the future. The strategic selection of this particular case contributes significantly to the external validity of this case, by means of improved allowance for testing through literal and theoretical replication (Yin, 1989, as cited in de Vaus, 2001: 239).

The selection of a case study approach, as with any theoretical approach, includes challenges and research limitations. In particular as mentioned previously, case studies rely very heavily on the researcher for a wide range of skills to collect and interpret the research data. Thus interpretation, validity, and reliability are the challenges which must be recognized. However, I feel that the strengths of this theoretical approach outweigh its limitations.

Furthermore, this explanatory case takes a systemic approach to analyse its political geography elements. As adapted from a study by Cohen and Rosenthal (1971: 5-31, as quoted in Cohen, 1973: 17), their framework best explains the construction of a

systemic approach to studying geopolitics. The following template serves this case well when extrapolating this framework to review what has evolved into a geopolitical question of international law:

> The geopolitical system was advanced as the unit within which the political process interacts with geographical space. Political transactions, structures and societal forces are the components of the process; place, area and landscape are the components of geographical space. Process and space interact through the formation of political action areas, and various ideological attachments, organizations, and perceptions characterize these actions areas.

1.7: METHODOLOGY

This research is inter-disciplinary by design, given the multi-faceted nature of the issue of mid-ocean archipelagic states designating archipelagic sea lanes. Sub-fields which are drawn from include maritime law, international relations, domestic public policy and public administration, marine environmental science, political ecology, environmental politics, transportation and logistics, geography and anthropology. It is through the compiling of relevant data from these various sub-fields, that this thesis constructs a wider inter-disciplinary analysis of this issue.

The research method employed in this thesis is qualitative research accomplished through a literature review with multiple sources of evidence. This allows for a full examination of the archipelagic concept, the Indonesian process, the Philippine possibility, and possible impacts on the Philippines by the Indonesian process.

The research is largely focused through in-depth archival research utilizing primary sources such as historical documents, government publications and legislation, and official records, and secondary sources including academic texts, scholarly journal articles, theses, conference papers, reports, and print media. Interviews with respective

government officials in Indonesia and the Philippines were not conducted due to time and access constraints.

Leading authors concerning the issue of mid-ocean archipelagic states in International Law include Evensen (1957), Dubner (1976), Rodgers (1981) and Munavvar (1993); and Southeastern Asia regional experts Tangsubkul (1984), Kwaitkowska and Agoes (1991), and Beckman (2007). Commenting on the IMO and its role and actions in this process are authors such as Warner (2000), Johnson (2000), and Forward (2009). Readings on the Indonesian case include Coquia (1983), Agoes (1991; 1997), Djalal (2003; 2009) and Puspitawati (2005). Readings on the Philippines case include Santiago (1974), Batongbacal (2002; 2008), Encomienda (2009), and Bensurto Jr. (2012).

Additional research included sources from the international community (United Nations Division for Ocean Affairs and Law of the Sea, United Nations Convention on the Law of the Sea I & III, International Maritime Organization); government publications and legislation (Government of Indonesia, Government of the Philippines, Australian Government, United States Government); and print media sources (Far East Economic Review, New York Times, The Jakarta Post, The Philippine Star, Associated Press).

During the course of my research, I utilized research facilities at the University of Prince Edward Island. Furthermore, I traveled on academic exchange to the University of Malta and utilized research facilities there, as well as at the United Nations International Maritime Law Institute which is housed in Msida, Malta. While in Malta, I

was quite fortunate to be given permission to sit in on multiple undergraduate law lectures by Professor David Attard[1] dealing specifically with the Law of the Sea Convention. These lectures were invaluable in providing a better grounding in the legal nuances of maritime law.

To conclude, this chosen method and procedure ensure that my research is comprehensive and encompasses all evidence to construct a completed case picture for this Philippine case.

Case Study Design

Yin (2003: 20) explains research design as "a logical plan for getting from here to there," where "here" refers to the research questions posed and "there" denotes the conclusions reached to the questions.

Yin (2003: 21) offers five key segments to successful research design:

1. A study's questions;
2. Its propositions, if any;
3. Its unit(s) of analysis;
4. The logic linking the data to the propositions; and
5. The criteria for interpreting the findings.

[1] Professor Attard is the Director of the International Maritime Law Institute, an organ of the International Maritime Organization. As of October 1, 2011, he is a sitting Judge on the International Tribunal for Law of the Sea (ITLOS).

This case involves looking at five research questions as stated previously (section 1.5) in this chapter. The proposition of this case is that the Philippine case study has been influenced by the Indonesian case. The unit of analysis in this case is archipelagic sea lane adoption by means of submissions to the International Maritime Organization by mid-ocean archipelagic states as defined and permitted by criteria outlined in Part IV of the United Nations Law of the Sea Convention.

During the course of analyzing the data collected, I relied more heavily on a few chosen analytical tools. As outlined in Yin (2003), these include pattern matching, explanation building, rival explanations, and chronological analysis. I employ pattern matching when analysing my research data to help assist in locating trends lending themselves to factors which are influencing this case, alongside the Indonesian experience. Secondly, as this is an explanatory case, I utilize a strong analytical narrative to build my explanation of this case. This explanation aims to explain which factors are influencing the case, and to attempt to quantify how great this influence is. Third, armed with identified possible influencing factors, I run these factors against the six real life rivals which Yin (2003: 113) lists:

1. Direct Rival
    - "An intervention ("suspect 2") other than the target intervention ("suspect 1") accounts for the results"
2. Commingled Rival
    - "Other interventions and the target intervention both contributed to the results"

3. Implementation Rival
    - "The implementation process, not the substantive intervention, accounts for the results"
4. Rival Theory
    - "A theory different from the original theory explains the results better"
5. Super Rival
    - "A force larger than but including the intervention accounts for the results"
6. Societal Rival
    - "Social trends, not any particular force or intervention, account for the results"

The defined criteria this thesis shall employ for determining whether the proposition offered is supported by the data will include any direct references to the Indonesian case, or any alterations in government policy or direction concerning the Philippines ASL process that the evidence points to as stemming from the Indonesian case. The burden of proof, explanation and validity lie solely on the strength of arguments put forth in this thesis.

This explanatory case strives to produce an idiographic explanation, which de Vaus (2001: 233) defines as "focus[ing] on particular events, or cases, and seek[ing] to develop a complete explanation of each case." Also, de Vaus (2001: 236) notes the

importance of case study design to the historical context by pointing out that case studies specifically include this element in order to offer a better understanding. These two previously mentioned design features lend a better internal validity to this case (de Vaus, 2001: 233).

1.8: STRUCTURE OF THESIS

This thesis is structured through clearly defined chapters dealing with specific materials grouped into sections. This first chapter has introduced the background, thesis objectives, research goals, thesis significance, research questions, and research methodology and methods. The subsequent chapters are chronologically presented as follows:

Chapter Two: Archipelagos and the Law of the Sea outlines the history of the UNCLOS process dating back to the end of World War II, including pertinent facts of Indonesia's experience in adopting ASLs. The chapter starts with the pre-preparatory work leading to the UN conferences, UNCLOS I and II, which are touched in short order. UNCLOS III and the archipelagic concept are then discussed at greater length, lead into a section on the UNCLOS, 1982; the genesis of this thirty year process. Then, Part IV (Archipelagic States) of UNCLOS is reviewed, along with the trade-off negotiated by mid-ocean archipelagic states for Part IV. Next, considerations around the legal history (or lack thereof) for mid-ocean archipelagic states are highlighted, along with another major creation of UNCLOS, 1982, the marine jurisdiction of Economic Exclusive Zones (EEZ). Chapter Two then moves to explain the historical background of the mid-ocean archipelagic state of Indonesia in relation to UNCLOS. Lastly, an

examination of the process undertaken by Indonesia to designate their archipelagic sea lanes, and the actions and role of the IMO is offered.

Chapter Three: The Case of the Republic of the Philippines concisely presents the facts of the case of the Republic of the Philippines as it relates to UNCLOS. The chapter starts with an introduction to the Philippines case, providing concise background information on the Republic of the Philippines. Also discussed is Philippine domestic history around the archipelagic concept, with respect to national legislation and actions of the executive branch. This historical review is strengthened by looking at the evolution of the Philippine position relative to the archipelagic regime and UNCLOS. Highlighted is a 1997 text which presents a case for archipelagic sea lane (ASL) designation in the Philippines including two technically thought-out ASLs. Then, special attention is paid to the most important part of the case: the very recent legislative efforts of Philippine lawmakers to domestically designate three ASLs, the actions and decisions of which are closely examined.

Chapter Four: Findings and Analysis sets out to answer my five research questions. To begin, I look to answer the most pressing question: will the Philippines enact ASLs? Having explained the Philippine case and whether ASLs will be enacted, I move to analysing how specifically the Indonesian experience has impacted the Philippines case. I then seek to answer my third research question, by identifying further factors beyond the Indonesian experience which are influencing the Philippine case.

These factors are identified as the root issues of extensive debate within the populace and all branches of Philippine government surrounding the possibility of the

designation of archipelagic sea lanes. They include many policy matters such as regional states such as China, global maritime powers such as the United States, international intergovernmental organizations, and international public opinion and civil society actors, to name but a few.

These factors are contextually woven together into an explanatory narrative identifying common linkages. Further, these factors are applied against the recent Philippine actions in an effort to test how much, and illustrate the lengths to which, each factor has been accounted for and applied by the Republic of the Philippines.

Finally, this chapter moves to the two remaining research questions which deal with implications based on the findings. These research questions are answered by theorizing what the implications of the study are, for the Philippines; and for the other mid-ocean archipelagic states.

In Chapter Five: Conclusion I conclude this paper by summarizing the main arguments of this thesis. This summary of my findings is used to draw main conclusions. Furthermore, I offer comment as to possible further study within this subject area.

1.9: CONCLUSION

This chapter has introduced the case of the Republic of the Philippines and the United Nations Convention on the Law of the Sea. This chapter has briefly discussed the history and background archipelagos, UNCLOS, and the relationship between them. Additionally the thesis objectives, research goals, thesis significance, research questions, and research methodology and methods have all been outlined.

Chapter Two: Archipelagos and the Law of the Sea

In this new era on which we have entered, the effective unit of foreign policy and strategy is no longer the nation state, however large, but the coalition of such states brought together and held together for certain purposes.

(Lester B. Pearson, 1956, future Prime Minister of Canada, quoted in Vital, 2006: 84)

2.1: INTRODUCTION

The international climate in the post-World War II era was one of change. While the major maritime powers such as the United States, the U.S.S.R., and the United Kingdom continued to wield significant influence and authority, this period was marked by the vast divestment of colonies from many nations and the increased maturation of relatively young countries as well as those soon to emerge.

Kapoor (2009: 177) noted three main keys which led to the increased international interest in further development of the law of the sea in the period following World War II: the rapid advancement in ocean technology, the emergence of new nations from the old colonial empires and the increased demand for ocean resources.

The ever developing archipelagic states wanted to assert their voices on the international stage to ensure that their states had a cohesive unity and sovereignty which enclosed their islands and the waters surrounding them as one. This concept was a central nationalistic element of recently obtained sovereignty for these countries. As I

shall discuss in greater detail in section 2.8, Indonesia undertook policies and legislation to enshrine the archipelagic concept, with the Philippines shortly following suit.

The importance of the archipelagic concept to the archipelagic state was immense. Sovereignty, unity and territorial integrity leading to security and stability were at, or near, the top of the list. Also, not to be discounted were the economic interests within the waters of the respective archipelagos: natural resources are an important asset to any island state. Indeed, these attributes are distinctive priorities of all states, be them land-locked, coastal or island. However, the international community was not very receptive to these measures. Under the long held "Freedom of the High Seas" concept, vessels from all flag states had been using the waters and shipping lanes in and around the islands of both countries for decades, if not centuries. Burke (1977: 269) termed the interests of this position as "[e]fficiency, economy, and convenience in transportation [which] serve all nations" as possibly at risk. An even more alarming topic for the maritime powers that could and, ultimately did, end up being raised was the status of the waters, raising restrictions on their respective navies.

Jackson (2007: 142) believes that globalization is not displacing sovereignty, pointing out that while integration has vastly increased due to technology in today's world, goods and vessels have been transiting the globe for centuries. What this view fails to acknowledge is the effect of decolonization when superimposed over our rapidly integrating world. As I stated earlier in this section, these former colonies are predominately islands. Specifically, in the cases of Indonesia and the Philippines, these two archipelagic states are clusters of islands which have international marine routes passing through them. Jackson's generalization fails to recognize the plight of these

archipelagic states and the wider negotiations of UNCLOS which unfolded over the better part of the second half of the twentieth century.

The archipelagic state has recently emerged on the international system. Indeed, LaFlamme (1983: 361) notes that "[d]espite the fact that literally hundreds of anthropologists have conducted fieldwork within such societies, the concept of the archipelagic state has received relatively little attention." This observation holds true for most fields of research, and the connected lack of understanding extends to the international system. Further complicating the archipelagic issue was the fact that it was largely absent from existing customary international law, and as such, it was a unique, one-off sui generis matter for debate and discussion. (Andrew, 1978: 50) Given what was at stake, a clear division of polar opposite viewpoints was clearly evident. The debate would unfold through the UNCLOS process and continues to an extent to this very day.

2.2: LEGAL CONSIDERATIONS

Amongst the legal hurdles archipelagic states faced was the absence of this issue in existing international law. Andrew (1978: 49) was quite accurate in stating that "the different regimes of jurisdiction or types of marine zones are borrowed from traditional international law, which is continent-based and land-centric, and thus poorly fit the archipelago's situation." With respect to sovereignty, the principle of uti possidetis juris ('as you have, so may you hold') might have applied. The uti possidetis juris principle means "according to which existing boundaries are the pre-emptive basis for determining territorial jurisdictions in the absence of mutual agreement of all affected

state parties to do otherwise" (Ratner, 1996; Shaw, 1996, as quoted in Jackson, 2007: 110).

However, there are three main factors which seem to have ruled this principle out. First, the global context during the Cold War meant neither side (the United States and the U.S.S.R.) would want to broach this issue; second, the boundaries of the archipelagic states were contested by a large number of states at UNCLOS, including the maritime powers; and lastly, in the context of the Cold War, the strategic significance of the waters in question, and the lack of existing international law at the time of UNCLOS, meant that the maritime powers were not going to allow the archipelagic states to gain absolute sovereignty over their waters, thus restricting available access to user states.

Further consideration can be undertaken of the international law regime which was in place for waters. Dating back to Hugo Grotius in 1609, the long standing debate has centered on the openness of the seas. Mare liberum, as referred to earlier, is Latin for "free (open) sea" and was the predominate school of thought in colonial seafaring powers for centuries (Santiago, 1974: 315). An opposing concept, mare clasum or "closed sea" pertained and still does, to waters which fall under national jurisdiction (Santiago, 1974). Thus, there were two clearly defined polar opposing concepts with no visible middle ground. The masterstroke of UNCLOS would be to locate, construct and move towards an acceptable compromise for all nations.

2.3: THE UNITED NATIONS PROCESS

The United Nations convened three multi-lateral conferences (UNCLOS I, II and III) over a period of thirty years to discuss matters surrounding marine and maritime issues including state maritime boundaries, the high seas, resources, mining and navigation. These conferences were large international affairs, where negotiators and diplomats from across the globe attempted to reach consensus to hash out an all-encompassing agreement.

Prior to UNCLOS I, Jens Evensen, a Norwegian jurist, was engaged to produce a scholarly legal report on the issue of archipelagos and their waters. This report, Certain Legal Aspects Concerning the Delimitation of the Territorial Waters of Archipelagos, was submitted on November 29, 1957, and took a critical look at archipelagos. Evensen (1957: 290) defined an archipelago as, "…a formation of two or more islands (islets or rocks) which geographically may be considered as a whole." He also distinguished between two particular types of archipelagos: coastal, and outlying (mid-ocean). The report reviewed existing studies, the views of international bodies and publicists on the issue, and the practices of various archipelagic states. Evensen reached the following conclusion:

> In the writer's opinion, the waters between and inside the islands and islets of the above-mentioned type of archipelago must be considered as internal waters. But, where the waters of such an archipelago form a strait, it is in conformity with the prevailing rules of inter-national law that such a strait cannot be closed to traffic. Whether a water passage is to be considered a strait or not, must be decided in each specific case.

The archipelagic issue was not resolved at UNCLOS I. A lack of consensus around the legal status of waters found within mid-ocean archipelagos put the archipelagic issue on the table for future discussions (Talaie, 1998: 209). UNCLOS II involved "no detailed discussions on the issues related to mid-ocean archipelagos (Talaie, 1998). However, tense off-program discussions around the issue were taking place. After the completion of UNCLOS II, the Conference Chairman, Arthur Dean wrote:

> Under international law, foreign vessels may not pass through internal waters as of right, even if their passage is innocent. It is for this reason that we do not recognize the validity of this extensive and unilateral archipelago theory. (Dean, 1960, as noted in Coquia, 1983: 22)

UNCLOS III

The stage was set for a third conference to conclude negotiation and debate, bringing to fruition a comprehensive international agreement to bear. A media report in The Times (London) (June 12, 1974: 16) the week prior to the conference started commented:

> It also represents arguably the most complex set of negotiations ever undertaken. More governments are taking part than at any previous international meeting, including a general assembly of the United Nations itself. (…) For essentially Caracas, for 10 weeks, will be one vast horsetrading arena in which conflicting rights and interests will be bartered and bargained for, haggled over, swapped and abandoned.

During the course of UNCLOS III, the archipelagic issue was a key point of debate. The mid-ocean archipelagic cause was strengthened through its numbers, as many newly independent states including Fiji, Tonga, Mauritius and the Bahamas joined forces with Indonesia and the Philippines in protecting their position (Talaie, 1998: 209).

In the context of the ongoing Cold War, the maritime powers were in agreement on one matter – that "…their interest in the mobility of their sea-borne strategic forces

[was] 'non-negotiable'" (Ghosh, 1987: 905). These forces included submarines which could be prevented from conducting unannounced and submerged operations within archipelagos should the waters be deemed internal (Andrew, 1978: 51). Sanger (1983: 83, as quoted in Greene, 1992: 8) identified that "[t]he superpowers made unimpeded passage through straits their single non-negotiable demand in the Law of the Sea Conference." Succinctly put, the major maritime powers were of the belief that innocent passage rights within any archipelagic waters regardless of classification (territorial or internal) would negate their desired marine mobility (Andrew, 1978: 51). The possible reality of having eleven straits commonly used in international shipping and navigation falling into internal waters of archipelagos would certainly have caught the attention of the maritime powers (Gable, 1984: 13).

A rather significant point in negotiations came about when the archipelagic group was split from the group of states which housed what the UNCLOS process referred to as "straits used for international navigation."[2] As Professor K.L. Koh had theorized about the relationship between archipelagic regimes and straits used for international navigation:

> …if straits ultimately link part of the high seas or an economic zone, the fact that the immediate geographical connection consists of two bodies of archipelagic waters becomes irrelevant. If this is accepted then some archipelagic sea lanes could well be classified as straits used for international navigation (Koh, 1982, as quoted in Rothwell, 1990: 500).

[2] UNCLOS, 1982, Part III: Straits used for International Navigation.

A further split occurred when Canada secured separate status for the Canadian Arctic Archipelago under what became UNCLOS Article 234.[3]

Such divisions were a reality of the UNCLOS process and can be viewed in different manners. It might have possibly been a divide-and-conquer technique. Otherwise, from a different perspective, it could be seen as a natural division to further separate agendas. Such divisions were apparent as opinions were diverse and the stakes were unquestionably high.

During the course of negotiations of UNCLOS III, a working group was struck to address the archipelagic issue through the development of what was known as the "Single Negotiating Text" (Amerasinghe, 1974: 546). The archipelagic states of Indonesia, the Philippines, Fiji and Mauritius; and the United Kingdom (as a major maritime power) both put forward separate proposals as to what the draft archipelagic regime text should be. These proposals were representative of the two opposing positions, and both advocated quite strongly for a closed regime (the archipelagic states) and an open regime (U.K.), respectively.

Amerasinghe (1974: 556) identifies the aims of the U.K. proposals as limiting the archipelagic sea area and to align the proposed archipelagic regime closely to that of the territorial sea. Such aims were pursued to allow for a more open regime as noted above. LaFlamme (1983: 361), around the same time as the completion of UNCLOS III, pointed out that the objectives routinely levelled at the archipelagic concept were the

[3] Article 234 governs any ice-covered areas of all coastal states, however this example deals specifically with Canada and the Canadian Arctic Archipelago.

closing of certain shipping lanes[4] and the monopolization of prime fishing grounds, but wisely noted that strategic military concerns are in fact equally, if not even more, important.

The negotiations on UNCLOS III were concluded on April 30, 1982 (Tangsubkul and Fung-wai, 1983: 858). In the large context of an exhaustive negotiation composed of different concurrent working groups set over a large number of years, it is difficult to fully assess how the final text came to be. Further complicating this task is the fact that much of the important and sensitive negotiations happened in camera, and were not recorded. These negotiations primarily attempted to address the issues of maritime law pertaining to military assets and passage rights, leading Booth (1985: 4) to refer to the "backroom quality of the diplomatic treatment" of this issue.

2.4: THE UNITED NATIONS CONVENTION ON THE LAW OF THE SEA, 1982

The end result of UNCLOS III was the fully negotiated and agreed upon United Nations Convention on Law of the Sea. A key aspect of UNCLOS is the framework nature of this agreement. It has been termed an "umbrella convention" due to the references to applicable standards and regulations located in other international agreements and treaties.

Given the enormity and complexity of hammering out an all-encompassing international agreement on maritime legal issues, UNCLOS, 1982 is a by-product of its circumstances and reality. Over the course of thirty years of negotiation, over a wide breadth of topics, through applying diplomacy and negotiation, concessions were made by many states on many issues. In the words of UNCLOS III President Tommy Koh

[4] See also Hollick (1981), U.S. Foreign Policy and the Law of the Sea.

(1982: 36), "although the Convention consists of a series of compromises, they form an integral whole."

Additionally, as put so elegantly by Allott (1983: 8):

> But a Flying Dutchman wandering the sea areas of the world, carrying his copy of the Convention, would always be able to answer in legal terms the questions: who am I? who is that over there? where am I? what may I do now? what must I do now? The Convention would never fail him.

These views about UNCLOS dating back to around the time of UNCLOS III completion are optimistically hopeful. Guoxing (2000: 7), no doubt with the benefit of hindsight, makes indirect reference to the challenges that had been faced in implementation, cautioning that, "difference in understanding and interpretation is prevalent in the world community." Speaking to the specifics, Guoxing makes reference to the ongoing disagreement on interpretation between archipelagic states (Indonesia) and maritime powers (United States).

UNCLOS Created Marine Zones and Passage Regimes

The objective clarity afforded by UNCLOS is embodied in the many newly created marine zones (Figure 1) and passage regimes[5] contained in it. Batongbacal (2008: 2) explains the various jurisdictional considerations and rights attached to each of the marine zones mandated by UNCLOS in the following statement:

> Complete state sovereignty is recognized only within the internal waters. In territorial waters and archipelagic waters, states allow all ships to simply pass through [read: transit passage] (if they do anything else while passing, they may be subject to state jurisdiction). Beyond that distance, states have steadily less than full sovereignty and only specific powers (especially access to natural resources), until the 200 nautical mile limit where the high seas begin.

[5] See Appendix D for all figures.See Appendix B for a complete list of UNCLOS definitions of marine zones and passage rights.

> From there, the freedom to navigate and use the high seas remains, and the seas are the common heritage of humanity.

Economic Exclusive Zones (EEZ)

Economic Exclusive Zones were another new creation contained within UNCLOS. As explained by Dutton (2011: 54):

> The creation of the exclusive economic zone in 1982 by UNCLOS as a region extending beyond the territorial sea to a maximum of two hundred nautical miles from a coastal state's shores was a carefully balanced compromise between the interests of coastal states in managing and protecting ocean resources and those of maritime user states in ensuring high-seas freedoms of navigation and overflight, including for military purposes. Thus while in the exclusive economic zone the coastal state was granted sovereign rights to resources and jurisdiction to make laws related to those resources, high-seas freedoms of navigation were specifically preserved for all states, to ensure the participation of maritime powers in the convention.

Booth (1985: 38) highlights that with the creation of EEZs, "32% of the world's oceans (about 28 million square miles) [are placed] under national administration of various formats."

Right of Transit Passage

In the context of UNCLOS in its entirety, there is one passage regime of which to take particular note. The right of "transit passage" created by UNCLOS applies to all marine jurisdictions outside of internal waters, for all user states, in all coastal states. Olson (1996: 3) identifies the development and inclusion of "transit passage" as the central strategic concept agreed upon in UNCLOS III, advocated for jointly by both the U.S.S.R. and the United States.

2.5: UNCLOS, 1982 – PART IV: ARCHIPELAGIC STATES

The archipelagic concept was negotiated and agreed upon as Part IV of the completed Convention. This apparent victory by the so termed 'lesser states' was indeed gaining the legitimization of archipelagic waters. However, the end product is a compromise which illustrates the failure of archipelagic states to enshrine all their arguments into the final document (Coquia, 1983: 36). Faced with the pressures of the Cold War, the concessions provided by the archipelagic states were termed by one academic as "inescapable" (Ghosh, 1987: 907).

UNCLOS, Part IV deals specifically with archipelagic regimes (Figure 2).[6] It grants certain powers to the states in exchange for certain concessions to user states (primarily the major maritime powers). ASL passage allows for flexibility with certain military modes of transit which would not be allowed under the regime of innocent passage rights. These include the abilities for submarines to remain submerged while transiting within ASLs and for surface military vessels to travel in formation or to launch and recover aircraft. Furthermore, the archipelagic state cannot suspend or hamper ASL passage, whereas, in the traditional internal waters regime, innocent passage rights can indeed be suspended (Tsamenyi; Mfodwo, 2001: 29).[7] The archipelagic state is granted rights to temporarily suspend innocent passage rights in limited conditions (Rothwell, 1990: 498).[8] Notwithstanding the ASLs, within the archipelagic waters, the archipelagic state regulates innocent passage rights for foreign vessels. Innocent passage rights call for prior notification, surface submarine travel and

[6] For a full documented history of the origin, development and new international status of the concept of archipelagic states, see: UN Publications. "Archipelagic States: Legislative History of Part IV of the United Nations Convention."
[7] See also, UNCLOS Article 52[1]
[8] See also, UNCLOS Article 52[2]

suspension of flight operations (Far Eastern Economic Review, December 29, 1994/January 5, 1995).[9] Once an ASL submission is approved and implemented, it limits all overflight (air) traffic only to the airspace above the designated ASLs (Tsamenyi; Mfodwo, 2001: 29).[10]

Herman (1985: 198) points out in the conclusion of his timely analysis of the off-lying (mid-ocean) archipelagic concept within UNCLOS that it contains hidden legal complexities within the "Archipelagic States" section (Part IV). These complexities concern states fitting the state criteria as defined under Part IV, inexact science of delineating baselines and interpretations around the legal status of minor features such as "reefs, low-tide elevations, and rocks" (1985: 199).

There are twenty-two states that formally claim archipelagic state status under UNCLOS.[11] Talaie (1998: 213) notes that each island state weighs its own factors and considerations in determining whether or not to proclaim archipelagic status. According to Kopela (2007: 501) fifteen of these have enacted baselines:[12] However, Kopela fails to determine whether or not the respective statuses and baselines are compliant with UNCLOS. It should be noted that the Philippines is included on her list, but as shall be discussed, the Philippine baselines at that time were quite contentious, non-compliant

[9] See also, UNCLOS Article 52[1]
[10] See also, UNCLOS Article 53[5]
[11] These states are Antigua and Barbuda, Bahamas, Cape Verde, Comoros, Dominican Republic, Fiji, Grenada, Indonesia, Jamaica, Kiribati, Maldives, Marshall Islands, Mauritius, Papua New Guinea, Philippines, Saint Vincent and the Grenadines, Sao Tome and Principe, Seychelles, Solomon Islands, Trinidad and Tobago, Tuvalu, and Vanuatu. <http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/table_summary_of_claims.pdf> (As at July, 15, 2011).
[12] As of 2007, the Bahamas, Comoros, Kiribati, Marshall Islands and Seychelles had not defined their archipelagic baselines. Kopela (2007: 515) raises a further interesting point that six mid-ocean archipelagic states (Dominican Republic, Fiji, Kiribati, Marshall Islands, Tuvalu and Solomon Islands) recognize innocent passage of both ships and aircraft; as opposed to UNCLOS, which only requires recognition of ships.

with UNCLOS, and not recognized by the international community. Consulting the United Nations (U.N.) summary of claims as of July 2011, five archipelagic states have enacted legislation that makes allowances for straight baselines: Dominican Republic, Grenada, Kiribati, Mauritius, and Vanuatu.[13]

The Indonesian & Philippine Contributions to Part IV

Both Indonesia and the Philippines played substantial roles in ensuring that the archipelagic concept was debated, and a recognizable portion of the concept was included in UNCLOS. The fundamental belief, on which Indonesia and the Philippines based their respective views of the archipelagic concept, was the requirement to safeguard their individual states' political unity and the territorial integrity of their land and waters as a singular unit (Tangsubkul, 1984, as quoted in Batongbacal, 2004: 50).

Rothwell (1990: 497) points to three main points which Indonesia presented for their arguments:

- its consistent adherence to the Wawasan Nusantara concept in Indonesian law, having effect on both internal and international law[14];
- acquiescence on the part of neighbouring states who implicitly accepted the existence of Indonesian baselines which surrounded the archipelago; and

[13]<http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/table_summary_of_claims.pdf> (As at July, 15, 2011)
[14] Wawasan means "outlook"; Nusantara refers to "people", and "seeks the unification of the land, waters, and the people of Indonesia" (Rothwell, 1990: 496).

- the international support the emerging archipelagic regime advocated by Indonesia, the Philippines, Fiji and Mauritius had received in international fora.

It was noted by Munavvar (1995: 287-288) that the Philippines "argued that the unity of the archipelagic state and the protection of its security, the preservation of its political and economic unity, the preservation of its marine environment and the exploitation of its marine resources justified the inclusion of the waters inside an archipelago under the sovereignty of the archipelagic state and the granting of special status over such waters."[15]

2.6: THE ARCHIPELAGIC CONCEPT

As noted earlier, the Philippines' argument focused on territorial integrity and security, to bring these waters inside the archipelago under the sovereignty of the state. To reach this goal, the state must first define what limits constitute the archipelago. These arguments were supported and reinforced by other archipelagic states, including Indonesia. As stated by one prominent Indonesian:[16]

> It is the status of the waters enclosed by the archipelagic baselines which constitutes the most essential element of the concept rather than the method of drawing straight archipelagic baselines, in as much as it gives meaning to the concept of unity.

O'Connell (1971, quoted in Herman, 1985: 177) writing prior to the commencement of the UNCLOS III was able to fully capture the core arguments of the archipelagic states:

[15] Also Bautista (2011), p. 43
[16] Nugroho Wisnumurti, in Archipelagic Waters and Archipelagic Sea Lanes (as quoted in Kwaitkowska and Agoes, 1991), page unknown.

> The essence of mid-ocean archipelago theory is that a relationship exists between the features themselves, so that a situation exists which is analogous to that of a complex coast of a continental country. In a sense a group of islands cannot be an archipelago without a centripetal emphasis which gives coherence to the whole, and expresses itself in an outer periphery which is the equivalent of the "general direction of the coast."

At issue with the archipelagic concept were the considerations of customary freedom of navigation versus the archipelagic states' concept of territorial integrity and full sovereignty. However, the archipelagic states truly viewed the larger context of these waters running much deeper into the very essence of their statehood:

> The archipelago concept is essentially a child of the basic unity that permeates the land, the water, and the people. Geography, economics, politics, and, in some cases, history, interweave to form a seamless and distinct whole. The concept is a function of the identity of the archipelago itself; for without this sense of identity, the archipelago will fail of statehood. (Santiago, 1974: 364)

The Archipelagic Concept Trade-Off

In order to objectively review the archipelagic concept, the role of sovereignty within the concept must first be examined. How exactly does this trade-off work and what conditions does it place on the sovereignty of the archipelagic states?

This trade-off involved the negotiation of the passage rights known as "archipelagic sea lane passage" (ASLP). Cay (2010: 39) refers to the archipelagic sea lane designation as "[the] greatest contribution of archipelagic states to the international community, particularly to major maritime powers because their right to navigation through archipelagic waters is being upheld and guaranteed."

Jackson (2007: 22) explains that, "sovereignty is like LEGO: it is a relatively simple idea but you can build different things with it, large or small, as long as you

follow the rules." Hence, sovereignty involves uniform principles but can take any number of forms in the real world. Given that the majority of the civilized world has long been discovered, mapped and divided, one particular frontier of sovereignty at this point in time involves the relatively new field of international maritime law. Freedom of the High Seas (mare liberum) was a staple doctrine of customary international law for centuries. Through the process of decolonization which has primary occurred in the second half of the twentieth century, many new independent states joined the international community. Many of these states were islands scattered throughout the oceans across the globe.

These newly sovereign island states seated around the table during the UNCLOS process had their own national interests to pursue. Jurisdiction of the physical land was not in question. However, the debate centered upon the waters surrounding these states and their jurisdictional limits over such waters would be a central aspect of the UNCLOS negotiations.

Not surprisingly, the island states wanted full sovereignty over their waters. Specifically, archipelagic states had a very unique case to make. The matters of the design and drawing of the baselines enclosing these waters and the status of the said waters contained within were to be up for interpretation, discussion, and negotiation.

2.7: CASE CLARITY

This thesis is a single explanatory case examining and explaining the position of the Republic of the Philippines with respect to ASLs. However, research data are being drawn from the Indonesian case of ASL submission, and as such, it is important to

distinguish the differences between the two cases. As clarified by Santiago (1974: 372) close to forty years ago in the midst of the UNCLOS process:

> The case of Indonesia resembles greatly that of the Philippines, as evidenced by the use of identical terms. But although similar, the two cases bear the following distinctions: Firstly, perhaps because the Indonesian archipelago occupies a more central geographical position in South-east Asia, the case of Indonesia has received much more protest and criticism. Secondly, while the Philippines is a unique example of archipelago in the sense that it has two large centers (Luzon and Mindanao) surrounded by thousands of islands and separated by relatively broad waters, Indonesia is even more unique because it has not only one or two centers, but at least four main parts - Sumatra, Java, Borneo, and Celebes. In Indonesia, the whole state apparatus and development might be seriously jeopardized if one of these four islands were isolated from the rest.

2.8: THE INDONESIAN EXPERIENCE

Background

The Indonesian belief in the archipelagic concept has been discussed in some detail in a preceding chapter. Building further upon that explanation, the following quote from Indonesian diplomat Noegroho Wisnomoerti accurately captures the essence of the archipelagic concept in the nationalistic fabric and discourse (1987, as quoted in Ku, 1991: 1):

> The nationhood of Indonesia is built on the concept of unity between the Indonesian islands and the inter-connecting waters. Those seas are regarded as a unifying, not a separating element...It was the first political manifestation of the concept of national unity which had inspired the nationalist movement started in 1908, to lead the national struggle for independence.

Djuanda Declaration - 1957

On December 13, 1957, the Government of Indonesia issued the Djuanda Declaration, a new policy which extended its territorial sea to 12 nautical miles (Agoes,

1991: 123). The Djuanda Declaration has been called "…Indonesia's major legal move to establish its position as an archipelagic state" (Agoes, 1991). Agoes identifies four main considerations for the issuing of the Djuanda Declaration:

- the geographical shape of Indonesia as an archipelagic state consisting of thousands of islands, has characteristics and features requiring its own special regulation;
- for the territorial unity of Indonesia, all of the archipelago and its connecting waters must be considered a unified whole;
- the territorial sea limit under Article 1 paragraph 1 of the 1939 ordinance is no longer consistent with the safety and security interests of Indonesia;
- every state has the right to take the necessary measures to protect the unity and safety of its territory.

These four points are all rooted in the obvious desire to strongly maintain and reinforce Indonesia's territorial integrity. This is truly the legitimation of the strong nationalistic narrative by the newly sovereign state, the Wawasan Nusantara view, with the archipelagic concept at its very core. Hamzah (1984: 30) states that Wawasan Nusantara, "represents the apex of its political aspiration of one nationality, one language and one homeland; by integrating the land and the water territories of Indonesia into one fatherland; an idea which originated in a Youth Pledge in 1928."

Law No. 4 – 1960

In 1960, Indonesian lawmakers passed Law No. 4, a law which dealt further with the matter of territorial waters. This law contained four rather simple paragraphs summarized by the following points (Agoes, 1991: 124):

- straight baselines shall be drawn connecting the outermost points of the outermost islands;
- waters situated within those baselines, including the sea-bed and its subsoil, as well as the airspace above them, and their resources, shall be placed under the country's full sovereignty;
- the breadth of the territorial sea shall be 12 nautical miles; and
- innocent passage through the internal waters shall be guaranteed, provided that it is not prejudicial to the country's interests and as long as it does not disturb its security and good order.

This legislation immediately more than doubled the size of the Indonesian territory, owing to the inclusion of many square kilometers of territorial waters (Agoes, 1991). It can be pointed out that these two measures can be viewed as a progression of legalizing, and by extension, lending legitimacy to, the Indonesian archipelagic concept.

The timing, scope and mandates of these two actions by the Indonesian government were the by-products of the ongoing UNCLOS process. The Djuanda Declaration appears to have been a cautious small first step that was taken prior to the convening of UNCLOS I. The Indonesian government wanted to test the reaction of the international community to the Declaration, prior to formally enshrining the ideals into

law (Agoes, 1991: 124). By contrast, after failing to receive support for the archipelagic concept at UNCLOS I, the Indonesian government chose to deliberately enact Law No. 4 (1960), prior to the start of UNCLOS II (Agoes, 1991).

Indonesian Straits Incidents

Indonesia has fiercely enforced and protected its waters since independence. It has made attempts to close its straits to user state vessels on four separate occasions: 1958, 1964, 1978 and 1988. These attempts were reactions to the actions of the Netherlands (1958), Britain (1964), and in the last two instances, "an effort to impose Indonesia's sovereignty over some of the world's most vital choke points" (Far Eastern Economic Review, Dec. 29, 1994/Jan. 5, 1995).

A report in the Far Eastern Economic Review in 1996 was the first to disclose a 1978 incident where "…an Indonesian frigate dropped depth-charges close to two Soviet submarines that had ignored instructions to surface." To engage in such an episode against a maritime superpower, albeit at a calmer period of the Cold War, truly underlines the strong Indonesian resolve over its waters.

The views of the United States can be observed through this passage from a letter dated April 4, 1989 which was written by Mr. David H. Small, then United States Assistant Legal Adviser for Oceans and International Environmental and Scientific Affairs (as quoted in Leich, 1989: 560):

> The United States cannot accept either express closure of the straits or conduct that has the effect of denying navigation and overflight rights. While it is perfectly reasonable for an archipelagic state to conduct naval exercises in its straits, either expressly or constructively, that creates a threat to the safety of users of the straits, or that hampers the right of navigation and overflight through the straits or archipelagic sea lanes.

These seemingly aggressive Indonesian actions were explained by Etty Agoes, then Executive Director of the Centre for Archipelagic Studies, Law and Development (Jakarta, Indonesia), in 1996 thus, "Some people feel we have to protect our status, because we spent so much time fighting for it. (…) It's not so much they're hardliners, but they're trying to be careful" (Far Eastern Economic Review, 1996). In view of the strong nationalistic views held by Indonesia concerning Wawasan Nusantara and the archipelagic concept, it was to be with great resolve and diplomacy that the Government set out to plan its ASL submission.

2.9: INDONESIAN ASL PROCESS

Indonesia began the long process of ASL designation in 1994 with a series of national surveys, and on the public administration side, finished national inter-agency coordination in 1995 (Djalal: 2009). Hashim Djalal, then Ambassador-at-Large for Maritime Affairs to the Foreign Minister, viewed an ASL submission as, "[Making] Indonesia more of a whole (…) It has a long-term strategic significance." In the same report, officials indicated a proposal was not targeting international shipping, but rather "putting a rein on foreign warships" (Far Eastern Economic Review, Dec. 29, 1994/Jan. 5, 1995).

External consultations occurred in 1996 with the International Hydrographic Organization, and user states including the United States, the United Kingdom and Australia (Djalal: 2009). These bilateral consultations focused on both the design of the archipelagic sea lanes and the rules that would apply to their usage. The strategic importance of the Indonesian sea lanes cannot be understated. A forced diversion of the

archipelago by sea-going vessels would add over three thousand miles and massive budgetary overages in fuel and all other incurred expenses (Ghosh, 1987: 905).

However, it was later argued by Rushli (2012: 2) that the Indonesian sea lanes while vital are more so secondary to the Strait of Malacca and Singapore, owing to the increased journey length from Asia Pacific to the Indian Ocean. He offers the Indonesian route of Lombok-Makassar adds 7,500 nautical miles and increases annual shipping costs anywhere from $84 billion USD to $250 billion USD (Rushli, 2012). It is noted that the Lombok-Makassar route is an important route for Australian trade, and concludes that the Indonesian routes "play a critical role in the flow of the world's shipping," and any interruption on these routes would negatively impact international shipping and the global economy (Rushli, 2012).

The Indonesian government noted in their submission to the International Maritime Organization's (IMO), Maritime Safety Committee (MSC) that they considered the following factors (Table 1) during the course of determining and designing their ASLs.

Table 1: Factors considered by Indonesia during ASL process[17]
International transportation and aviation needs through Indonesia's archipelagic waters
Hydrographic and natural marine conditions
The intensity of coastal and inter-island navigation and overflight
Fishing activities
Existing oil and gas exploration and exploitation
The presence of installations and structures
Protection of the marine environment
Coastal and marine tourism development
Indonesian peace, stability and security particularly in the heavily populated coastal zones
The capacity of law enforcement agencies to monitor navigation and overflight in relation to the safeguarding of law and order.

Indonesia ran into opposition in its initial efforts to enact its ASLs, finding two significant areas of contention with the maritime powers. Indonesia wanted to unilaterally enact ASLs without seeking approval and without referring the matter to any international bodies. Moreover, Indonesia only intended to enact three north-south lanes and no east-west lane (Edwards, 1998: 15-16). This entire file was to be settled before the International Maritime Organization.

[17] Government of Indonesia submission to the IMO MSC (as quoted in Johnson, 2000), p. 326-327

2.10: THE INTERNATIONAL MARITIME ORGANIZATION

Towards the completion of the UNCLOS process, a looming question became the U.N. regulation of the new Convention. Kingham and McRae (1978: 127) noted that existing U.N. agencies seemed capable of this task; however, organizational reviews and top level direction to ensure appropriate and harmonious distribution of areas of responsibility would be required. Specifically focusing on Part IV (archipelagic regime), would an existing U.N. organ be mandated to regulate or would a new agency need to be created?

The Law of the Sea Convention enshrined states' rights to regulate the adoption of ASLs to "the competent International Organization" (Article 53[9]). This responsibility has fallen to the United Nations' International Maritime Organization (Beckman, 2007: 120; also Johnson, 2000, Batongbacal, 2004; Bateman, 2007; Forward, 2009). The International Maritime Organization (IMO) came into existence in 1948 as a U.N. mandated body responsible for deliberating and regulating shipping matters and standards (Harrison, 2011: 155). The IMO's own documentation states the purpose of the organization as (as quoted in Harrison, 2011: 156):

> to provide machinery for co-operation among Governments in the field of governmental regulation and practices relating to technical matters of all kinds affecting shipping engaged in the international trade; [and] to encourage and facilitate the general adoption of the highest practicable standards in matters concerning the maritime safety [sic.], efficiency of navigation and prevention and control of marine pollution from ships.

Indonesian Objection to Mandate

Indonesia held some key objections concerning the perceived mandate of the IMO when it came to the ASL process. These objections centered around the fact that

the IMO is an organization with a focus on international shipping and trade. Building upon the earlier quoted purpose, the IMO's own mission statement identifies its purpose "is [to promote] safe, secure and efficient shipping on clean oceans" (as quoted in Forward, 2009: 152).

Indonesia notified the IMO in 1996 that it intended to submit its proposal for consideration. This triggered the long process (Figure 4), in which Indonesia attempted to achieve adoption of their ASL submission. The IMO designated its Maritime Safety Committee (MSC) to take control of this file. The MSC deeming this matter as a routing issue, further delegated the file to its navigational sub-committee.

The role and mandate of the IMO was a contentious subject between the maritime powers and Indonesia. Indonesia was of the opinion that the IMO would fill a technical role, to review the proposal and deem it safe for navigation (Edwards, 1999: 17). They recognized the IMO's authority merely "on matters relating to navigational aids and the safety of shipping – not on the delineation of sea lanes" (Far East Economic Review, February 29, 1996). An unidentified source within the Indonesian Defence Ministry was quoted early in 1995 explaining, "We [Indonesia] will designate the sea lanes unilaterally, (…) but we will seek the IMO's advice on the type and intensity of navigational aids" (Far East Economic Review).

The maritime powers were of the belief that the IMO was required to adopt a much more "hands on" approach. An Australian statement which was widely supported by other states indicated that much larger issues, such as the number of normal routes and other international law matters, needed to be considered by the IMO (Edwards,

1999: 17). The Indonesian submission was left vulnerable to the maritime powers due to one simple sentence contained within the submission; "Pending the designation of other sea lanes through other parts of the archipelagic waters, the right of sea lanes passage may be exercised in the relevant archipelagic waters in accordance with the Law of the Sea Convention, 1982" (as quoted in Edwards, 1999: 16).

The Sticking Point of a Fourth ASL

The initial Indonesian proposal consisted of three north-south archipelagic sea lanes. The international community and the maritime powers protested the absence of over ten additional routes (Kaye, 2008: 16). In 1996, during the course of the negotiation, Walter Slocombe, American Under-Secretary of Defence for Policy, went on record to state that Indonesia had "by no means" ruled out a fourth ASL, an east-west one (Far East Economic Review, May 2, 1996). Two weeks later, Ali Alatas, the Indonesian Foreign Minister was quoted in the New York Times (May 16, 1996):

> They want a fourth archipelagic sea-lane going east-west through the Java Sea… But we have told them that the Java Sea is full of undersea cables and oil rigs. It's a very shallow sea, in many parts only 45 meters. So we are rather reluctant to make it an archipelagic sea-lane.

In opposition to any additional lanes being proposed, Indonesian representatives indicated that shallow depths, overcrowding with domestic marine traffic, and the presence of oil and gas rigs made these proposed areas unsafe for passage by user states vessels, and "especially submerged submarines" (New York Times).

By late 1997, Indonesia had offered a small concession to the Americans in particular. Indonesia offered a short ASL that would act as an entry branch onto their submitted Sunda Strait lane (north-south) allowing surface military vessels en-route to

or from Singapore to "maintain operational readiness" (Far East Economic Review, August 21, 1997). However, the Indonesian position on a fourth east-west lane was bluntly restated in the Far Eastern Economic Review which read, "[Indonesia] are still opposed to an east-west sea lane that would traverse the length of the archipelago, pointing out that only three or four warships actually use that route each year anyway."

Bilateral Discussions

Bilateral discussions became an important forum for this matter. These dated as far back as 1991 with "a number of bilateral consultations" (Edwards, 1998: 15) between the United States and Indonesia. In the period covering February 1996 to early 2000, there occurred three formal bilateral meetings between Indonesia and Australia, and, one formal bilateral meeting between the United States and Australia (Warner, 2000: 170). My research did not manage to uncover how many informal meetings or discussions between any or all state parties occurred.

2.12: GENERAL PROVISIONS ON THE ADOPTION, DESIGNATION, AND SUBSTITUTION OF ARCHIPELAGIC SEA LANES

Through the formal and bilateral meetings, the IMO came to consider nineteen agreed upon points around process for an ASL submission. These points were endorsed and issued as the General Provisions on the Adoption, Designation, and Substitution of Archipelagic Sea Lanes (GPASL). Johnson (2000: 322) highlights four key developments which she terms as "major innovations" encompassed in the GPASL:

- the creation of a concept of partial designation;
- reinforcement of the "obligation" (in Art. 53[4]) upon archipelagic states to include all international navigation routes in their archipelagic sea-lanes proposals;
- more onerous pre-proposal procedures especially for the archipelagic state; and
- a formalised role for foreign states in relation to the preparation and determination of a proposal

Johnson (2000: 331) noted that the GPASL increases the control of user states and the IMO over the designation process. Batongbacal (2004: 67) analyses the impacts of the GPASL on mid-ocean archipelagic states concluding:

> From an archipelagic state perspective, the GPASL may have undermined, rather than strengthened, the archipelagic state regime under the LOS Convention. The introduction of the concept of partial proposal or designation takes away from the archipelagic state the initiative to decide with finality on the designation of its ASLs, nullifies the benefit of designating any ASLs at all, and undermines the provisions of Part IV referring to substitution of sea lanes, elimination of similarly convenient routes, and application of innocent passage in undesignated routes. It severely limits the ability of the archipelagic state to rationalize the maritime traffic routes within its archipelagic waters, and practically legitimizes unmitigated passage through all waters of the archipelago. In addition, although the GPASL was issued by an international institution with competence over commercial shipping, its truly important provisions were actually negotiated and settled outside the IMO, between a select few members concerned with non-commercial issues such as naval mobility.

Warner (2000: 170) offers that, while the GPASLs are indicative of "some practical compromises necessary to implement [ASLs]," they did, "achieve[s] an appropriate balance between archipelagic and user state interests."

2.13: GPASL INTRODUCTION OF PARTIAL REGIME

The GPASLs introduced a concept advocated by the maritime states of a partial submission or proposal by Indonesia. The GPASLs define partial archipelagic sea lanes proposal as, "[An] archipelagic sea lanes proposal by an archipelagic state which does not meet the requirement to include all normal passage routes and navigational channels as required by UNCLOS. (para 2.2)" (as quoted in Warner, 2000: 176). The IMO determined that partial designation allowed for the "continued exercise of ASLP in other routes normally used for international navigation located within archipelagic waters," notwithstanding the authorization of the three submitted Indonesian archipelagic sea lanes (as quoted in Batongbacal, 2004: 55). Harrison (2011: 185) contends that a partial proposal concept is, "[A] procedural device that aims to satisfy the conditions in Article 53(4) that archipelagic sea lanes must include all normal passage routes used as routes for international navigation or overflight." Warner rightly points out the notion of a partial proposal or designation was not foreseen in UNCLOS, and clearing up the status of navigational rights for user states outside the designated ASLs was the main focus of the bilateral meetings upon agreement of the partial allowance (2000, quoted in Batongbacal, 2004: 55, Also Rothwell, 1990; Bateman, 2007).

Not all are so sure as to the benefit of this regime. As Bateman (2007: 44) points out, a partial designation is, in actuality, not consistent with UNCLOS Article 53(4), which calls for ASLs to "include all normal passage routes." Batongbacal further argues his position opposing the partial concept, explaining:

> The concept of partial designation also undermines the provision allowing the archipelagic state to substitute sea lanes under article 53(7) of the LOS Convention, and to no longer designate sea lanes which duplicate routes of similar convenience between the same entry and exit points under article 53(4). (…)If a complete ASL designation must at all times include "all routes", then there is no situation in which substitution can be called for, nor is there any opportunity to eliminate redundant routes; for that matter, neither is there any more utility in designating any ASLs since ASLP can be exercised practically anywhere in archipelagic waters. (2004: 56)

In the same article, Batongbacal supports his position by quoting Warner (2000) who said "[i]t has constantly been the position of the archipelagic states that solely innocent passage should apply in all other archipelagic waters, if ASLs have been formally proposed and approved by the IMO" (2004: 56). Batongbacal also states that "should a proposal be viewed as partial by user states it seems unlikely that the regime of innocent passage shall solely apply." These observations are echoed by Forward (2009: 143) who called the partial proposal a "significant victory" (for the maritime powers) noting such a designation "rendered the Indonesian ASLs practically useless because there is no compulsion for maritime countries to use them."

Batongbacal (2004: 66) later notes that the Indonesian designation revealed the key fundamental issue surrounding establishment of an ASL regime is the impact on the military and state vessels of user states. Specifically, military vessels and their varied operations, which Batongbacal: refers to as "naval surface, sub-surface, and aerial united," are heavily restricted by a complete ASL designation, while commercial traffic can merely exercise innocent passage rights within all archipelagic waters.

In the view of Captain Jonathan P. Edwards, USN, JAGC (United States Navy, Judge Advocate General's Corps),[18] when viewing the different ASL passage regimes in a military operations context:

> From an operational standpoint, designation of a partial system of archipelagic sea lanes is preferable to designation of a complete system. This is because in a complete system, international law does not require archipelagic states to include normal passage routes of similar convenience between the same entry and exit points. **A complete system is therefore likely to have fewer sea lanes than a partial system will have normal passage routes. [**emphasis added] (1999: 22)

The Royal Australian Navy stated in their policy and opinion newsletter, Semaphore (2005: 2):

> It is in Indonesia's interests to designate all normal routes as ASLs. Once it has fully designated its ASLs, transiting vessels will be restricted to exercising ASLP only in those ASLs, and will be limited to innocent passage through the rest of the archipelago. Until this is completed, Indonesia will have difficulty in enforcing its domestic law against transiting vessels.

On the matter of military and state vessels, Batongbacal maintains that:

> Such ships are beyond the IMO's jurisdiction and competence, which is why the substantial negotiations and discussions addressing the contentious issues had to take place not in the IMO sessions, but rather in bilateral inter-sessional meetings. **This is an indication of the IMO's limitation as a dispute settlement forum**. [emphasis added] (2004: 66)

2.14: CONSEQUENCES OF THE IMO DECISION (PARTIAL REGIME)

Indonesia's archipelagic sea lane proposal was deemed by the IMO as a partial submission, and thus a partial regime was designed in May 1998 (Cay, 2010: 5). The partial designating of the Indonesian ASLs also carried with it obligations towards the end goal of a full designation. Indonesia is required to update the IMO on its plans for

[18] Edwards' view is offered in an academic paper which was submitted to the Naval War College. It is important to note that such a paper is deemed to represent solely the author's views and not those of the U.S. military or U.S. Government.

preparatory work (i.e. surveys) and "is ultimately required to propose for adoption archipelagic sea lanes including all normal passage routes and navigational channels;" however, no timeline is attached to these obligations (Semaphore RAN, 2005: 2).

The analysed impacts of this decision seem clear. Johnson (2000: 332) writes in her conclusion that the general consequence of the Indonesian process was that it "reinforced that [ASL] regime's focus on preserving the interests of user states arguably to a further diminution of control by archipelagic states." Harrison (2011: 198) more directly observes, "[t]he IMO offers another example of informal mechanisms for change being used by states in preference to the formal amendment procedures found in the Convention."

The response of the Indonesian government in the aftermath of the IMO ruling has been rather careful. There has been no further action or submissions by Indonesia to the IMO. Arguably, this illustrates either a complete loss of confidence in the IMO in the role of neutral body, or could go as far as a rejection of the IMO's mandate (Forward, 2009: 153). Indonesia did take the step of enacting domestic legislation in 2002, which enshrined the three ASLs into law as a full designation, granting only innocent passage rights to all maritime traffic outside of them (Forward, 2009). It was not until 2003 at an IMO conference that Indonesia offered up any inclination it may consider consenting to a desired east-west lane; however, the same source referenced Indonesian officials indicating the required surveying for such a lane "might take several more years" (Far Eastern Economic Review, July 17, 2003).

2.15: CONCLUSION

This chapter has outlined the history of the UNCLOS process dating back to the end of World War II, including the archipelagic concept long advocated for the archipelagic states. This process cumulated in the United Nations Convention on the Law of the Sea, which enshrined the rights of mid-ocean archipelagic states under Part IV (Archipelagic States). These rights were the negotiated trade-off between the major maritime powers and the archipelagic states; which were forced to compromise on their archipelagic concept. Lastly, this chapter explained the historical background of the mid-ocean archipelagic state of Indonesia in relation to UNCLOS, highlighting the process undertaken by Indonesia to designate their archipelagic sea lanes. The role and actions of the International Maritime Organization in the Indonesian process and the establishment of the General Provisions on the Adoption, Designation, and Substitution of Archipelagic Sea Lanes were discussed, looking at the impact on Indonesia and in relation to the initially negotiation compromise found in UNCLOS, Part IV.

Chapter Three: The Case of the Republic of the Philippines

"An island is a nervous duality: it confronts us as a juxtaposition and confluence of the understanding of local and global realities, of interior and exterior references of meaning, of having roots at home while also deploying routes away from home"

(Godfrey Baldacchino, Islands – Objects of Representation, 2005: 248)

3.1: BACKGROUND

The Republic of the Philippines is an archipelagic state comprised of 7,107 islands, geographically stretching over many miles of water (Bautista, 2010: 115). Its long history with the archipelagic concept was previously introduced in Chapter Two. Additionally, the previous chapter explained the key points of the development of international maritime law throughout the UNCLOS process. This process identified the prerequisite matter of state baselines that, together with the status of waters enclosed within, make up the key aspects of the archipelagic concept. Such issues need to be reviewed as they are so interwoven with archipelagic sea lanes.[19]

3.2: TIMELINE OF THE ACTIONS OF THE PHILIPPINES

Note Verbale (1955)

The Philippines stated their position concerning their waters, in essence the archipelagic concept, in a Note Verbale to the Secretariat of the United Nations dated

[19] For more information, read Batongbacal, Jay. Philippine Maritime Territories and Jurisdictions; Part I: Why the Law of the Sea is so critical for the Philippines. Asia Pacific Policy Bulletin. Asian Center – University of the Philippines. 2008

December 12, 1955, during the course of the initial preparatory work in advance of UNCLOS I:

> The position of the Philippine Government in the matter is that all waters around, between and connecting the different islands belonging to the Philippine Archipelago irrespective of their widths or dimensions, are necessary appurtenances of its land territory, forming an integral part of the national or inland waters, subject to the exclusive sovereignty of the Philippines. (as quoted in Ku, 1991: 17)

UNCLOS I & II

The Philippines attempted to advance the topic of straight baselines for archipelagos (archipelagic concept) for debate in UNCLOS I and II. However, this effort was abandoned due to disagreement by the major maritime powers and a general absence of any other backing (Batongbacal, 2002: 2). Johnston (1988: 115) explains the specifics of this attempt at UNCLOS I in the following passage[20]:

> At UNCLOS I the Philippines introduced two alternative versions of a proposal for incorporation into the proposed convention: either that the straight baseline method, which had been approved by the ICJ[21], should be extended to archipelagos lying off the coast "whose component parts are sufficiently close to one another to form a compact whole, and have been historically considered collectively as a single unit"; or that island groups with those characteristics "may be taken in their totality and the method of straight baselines may be applied to determine their territorial sea." In both versions of the Philippine proposal it was made clear that the baselines "shall be drawn along the coast of the outermost islands, following the general configuration of the archipelago." Both versions were rejected, and indeed almost ignored.

In the aftermath of the failure of UNCLOS and an apparent lack of international will to address the archipelagic concept, the Philippines enacted Republic Act 3046, An Act to Define the Baselines of the Territorial Sea of the Philippines, on June 17, 1961 (Talaie, 1998: 209).

[20] The quoted passages within are from UN Doc A/CONF.13/C.I/L.98, 1 April 1958
[21] ICJ refers to the International Court of Justice

Republic Act 3046 (1961)

Republic Act 3046 was the first piece of domestic legislation enacted by the Philippines to define the limits of their territory. This Act established straight baselines around the outermost islands of the archipelago, based on the Treaty of Paris (1898) limits (RA 3046, Preamble). Moreover, Republic Act 3046 designated all waters within these baselines as inland or internal waters (RA 3046, Section 2).

Republic Act 5446 (1968)

Republic Act 3406 was amended on September 18, 1968, by the passing of Republic Act 5446 (Tangsubkul, 1984: 46). The significant reason for amendment was to include Sabah[22] (North Borneo) within the Philippine territory as it related to drawing the baselines (Santiago, as cited in Tangsubkul, 1984: 46), as the new Republic Act 5446 (Section 2) clearly stated:

> The definition of the baselines of the territorial sea of the Philippine Archipelago as provided in this Act is without prejudice to the delineation of the baselines of the territorial sea around the territory of Sabah, situated in North Borneo, over which the Republic of the Philippines has acquired dominion and sovereignty.

Presidential Decree 1599 (1978)

Presidential Decree 1599 came into effect on June 11, 1978, establishing the Philippine Economic Exclusive Zone (EEZ):

> There is hereby established a zone to be known as the exclusive economic zone of the Philippines. The exclusive economic zone shall extend to a distance of two hundred nautical miles beyond and from the baseline from which the territorial sea is measured: provided, that, where the outer limits of the zone as thus determined overlap the exclusive economic zone of an adjacent or neighbouring State, the common boundaries shall be determined by agreement with the State

[22] Sabah is a territory on Borneo Island, today recognized as a Malaysian state which is also claimed by the Republic of the Philippines.

> concerned or in accordance with pertinent generally recognized principles of international law on delimitation. (Section 1) (http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/PHL_1978_Decree.pdf)

UNCLOS Signing Objection (1982)

The Philippines signed UNCLOS on December 10, 1982 and ratified it on May 8, 1984 (Garcia, 2005: 55). At the time of signing, as allowed under Article 310, a formal declaration was made which explicitly stated that the Philippine signing did not impact their views on sovereignty (Appendix C). This declaration, while in line with their domestic legislation and Constitution, took a diametrically opposing view to the very international convention which the country was signing. Accordingly so, this declaration was officially protested by many states.

This declaration highlighted the precarious position which the Government of the Philippines was attempting to maintain. They had negotiated in good faith during the course of the UNCLOS process and were unhappy with certain concessions that were made by archipelagic states. It has also been recognized as a domestic political maneuver; that is, a tool to assist in ensuring ratification by the Philippine legislature (Batongbacal, 2005: 6).

Baseline Legislative Efforts (1987)

In 1987, the Congress of the Philippines debated legislation (HBN 16085; SBN 206 – See Table 2) concerning the territory's baselines, which was ultimately defeated (Encomienda, 2009: 460). Mr. Alberto A. Encomienda, Secretary-General; Maritime and Ocean Affairs Center, Department of Foreign Affairs, Republic of the Philippines, remarked in a panel discussion on ASLP in 2009:

> That's why I cited in my presentation that way back in 1987, well before UNCLOS came into force, we did attempt to pass legislation in Congress in order to get our archipelagic basepoints and baselines to conform to UNCLOS. **That law did not pass because of political considerations not having to do with UNCLOS**. [emphasis added]

The Period of 1990-2008

The almost twenty year period spanning from 1990 until 2008 produced few immediate changes to the status quo of the Philippine position on the archipelagic concept. In 1991, Kwaitkowska (1991: 4) noted that in contrast to the Indonesian legislation, the Philippine statutes are noteworthy for being the "most excessive instance of noncomformity" with UNCLOS. This was due to the absence of recognition of innocent passage rights within the legislation, owing to the waters being defined as internal waters (Kwaitkowska, 1991). Also, one of the baselines contained in Republic Act 3046 (1961), even with the amendment by Republic Act 5446 (1968), stretches well over 125 nautical miles (NM) which contravenes UNCLOS Article 47(2) which only allows archipelagic baselines up to 100 NM, save for three percent which may be longer, up to 125 NM (Kwaitkowska, 1991).

Such was the case of two contradictory positions, even after becoming a signatory to the Convention much earlier (1982): UNCLOS and the Philippines' domestic legislation. Indeed, the domestic legislation became more difficult to cling to upon UNCLOS entering into force in 1994. Nevertheless, the Republic of the Philippines continued to hold to their long standing position. However, the turn of the millennium began to see a slow sea change in the Philippines in terms of their maritime policy. The following table, Table 2, shows the legislative efforts to amend Philippine baseline legislation.

Table 2: Proposed Legislation to Amend Philippine Baselines[23]

YEAR	BILL	SPONSOR
1987	HB 16085 SB 206	Rep. Yap Sen. Shahani
2001	HB 2031	Rep. Lozada
2005	HB 1973	Rep. Cuenco
2007	HB 1202 SB 1467	Rep. Cuenco Sen. Trillanes
2008	HB 536 SB 2144 SB 2181 SB 2215 SB 2216	Rep. Marcos Sen. Pimentel Sen. Angara Sen. Biazon Sen. Enrile

As this table demonstrates, it took fourteen years for legislators to choose to make a second attempt to amend the existing baselines. This attempt in 2001 was solely made in the lower house, the first bicameral joint effort since 1987 not occurring until 2007. Encomienda (2009: 460) explains why there was such a long delay, looking to the events that happened during the 1987 debate:

> It was a very bitterly fought, contested proceeding, such that there was no attempt again until about five years ago to have another run at getting legislation. Now, it is nearly five years in the making. It has passed the lower house of Congress, but it has yet to go to the Senate.

Republic Act 9522 (2009)

These proposed legislative pieces became Republic Act 9522, which was passed on March 10, 2009, formally legislating the archipelagic baselines of the Republic of the Philippines (Section 1). These baselines are straight baselines and bring the Philippine

[23] Source: Bensurto Jr., Henry S. "Archipelagic Philippines: A Question of Policy and Law". Conference Presentation. (2012), Slide 17.

baseline system into UNCLOS compliance (Cay, 2010: 55). This legislation further claims two separate "Regime of Islands" as governed by UNCLOS Article 121; the Scarborough Shoal and the Philippine Kalayaan Island Group (KIG) (Section 2).[24] Additionally, RA 9522 instructs for itself and all baselines and maps to be "deposited and registered with the Secretary General of the United Nations" (Section 4). Lastly, RA 9522 amends all pre-existing "laws, decrees, executive orders, rules and issuances" (e.g. Republic Act 3406, Republic Act 5446), to ensure uniformity with this Act (Section 8.).

There was significant opposition to the passage of RA 9522 within the Philippines. Senator Miriam Defensor Santiago opposed this legislation in the belief that "if the Philippines declares itself an archipelagic state, the declaration would contradict the Treaty of Paris which sets out the boundaries of the Philippine national territory, which are wider than those allowed by the LOSC [Law of the Sea Convention]" (Bautista, 2010: 117).

Furthermore, Santiago argued:

> If the Philippines declares itself an archipelagic state, our zone of sovereignty would collapse. Our internal waters would become archipelagic waters where the ships of all states will enjoy the right of innocent passage. In addition, foreign states would have the right of so-called archipelagic sea lane passage. Ships of all states would have the right of passage and their aircraft would have the right of over flight (Santiago, 2009, as quoted in Bautista, 2010: 117).

Additionally, opposition appeared as a case against the Republic of the Philippines Government, brought to the Supreme Court of the Philippines (Bensurto Jr., 2012: Slide 22). G.R. No. 187167 (Prof. Merlin Magallona, et al v. Eduardo Ermita, et

[24] UNCLOS Article 121 defines an Island and affords Islands rightful claim over their own Territorial Seas, Contiguous Zone, EEZ and Continental Shelf as outlined by UNCLOS. The KIG is formally defined in Presidential Decree 1596.

al) was filed by two law professors (one also being a Representative) and thirty-seven University of the Philippines College of Law students. The petitioners claimed that RA 9522 was unconstitutional because it "dismembers a large portion of the national territory" (G.R. No. 187167 Decision).

The Supreme Court dismissed the case in a unanimous ruling on July 16, 2011 (ibid). Associate Justice Carpio in his decision noted several key points, the first of which was that the passing of RA 9522 had in fact increased the size of the Philippine maritime area (Figure 5), as shown in the following table:

Table 3: Maritime Area of the Republic of the Philippines[25]

	Extent of maritime area using RA 3046, as amended, taking into account the Treaty of Paris' delimitation (in square nautical miles)	Extent of maritime area using RA 9522, taking into account UNCLOS III (in square nautical miles)
Internal or archipelagic waters	166,858	171,435
Territorial Sea	274,136	32,106
Exclusive Economic Zone		382,669
TOTAL	**440,994**	**586,210**

[25] Source: G.R. No. 187167 (Prof. Merlin Magallona, et al. v. Eduardo Ermita, et. al.) Decision

Secondly, Associate Justice Carpio, in rejecting the petitioners' arguments against Article 2 (RA9522), writes:

> In fact, the demarcation of the baselines enables the Philippines to delimit its exclusive economic zone, reserving solely to the Philippines the exploitation of all living and non-living resources within such zone. Such a maritime delineation binds the international community since the delineation is in strict observance of UNCLOS III. If the maritime delineation is contrary to UNCLOS III, the international community will of course reject it and will refuse to be bound by it.
>
> UNCLOS III favors States with a long coastline like the Philippines. UNCLOS III creates a sui generis maritime space – the exclusive economic zone – in waters previously part of the high seas. UNCLOS III grants new rights to coastal states to exclusively exploit the resources found within this zone up to 200 nautical miles. UNCLOS III, however, preserves the traditional freedom of navigation of other states that attached to this zone beyond the territorial sea before UNCLOS III (G.R. No. 187167 Decision).

Lastly, in concluding, Associate Justice Carpio offers the following explanation of the true merit of RA 9522:

> Absent an UNCLOS III compliant baselines law, an archipelagic state like the Philippines will find itself devoid of internationally acceptable baselines from where the breadth of its maritime zones and continental shelf is measured. This is recipe for a two-fronted disaster: first, it sends an open invitation to the seafaring powers to freely enter and exploit the resources in the waters and submarine areas around our archipelago; and second, it weakens the country's case in any international dispute over Philippine maritime space. These are consequences Congress wisely avoided.
>
> The enactment of UNCLOS III compliant baselines law for the Philippine archipelago and adjacent areas, as embodied in RA 9522, allows an internationally-recognized delimitation of the breadth of the Philippines' maritime zones and continental shelf. RA 9522 is therefore a most vital step on the part of the Philippines in safeguarding its maritime zones, consistent with the Constitution and our national interest (G.R. No. 187167 Decision).

3.3 THE MATTER OF PHILIPPINE ASLs

1997 ASL Proposal

In 1997, the Institute of International Legal Studies at the University of the Philippines released its maiden publication in its Ocean Law and Policy Series. This publication entitled "Issue Focus: Designation of Sea Lanes in the Philippines" offers an in-depth look at a probable ASL submission.[26]As illustrated by Figure 7, this publication proposed two ASLs for the Republic of the Philippines.

These two lanes, one east-west and one north-south, are described by the author as follows:

> The East-West will traverse from Balabac Strait to Sulu Sea Junction going through Bohol Sea between Northern Mindanao and Southern Negros Islands and the Bohol Islands then through Surigao Strait going through Pacific Ocean. The North-South route is from Celebes Sea going through Sibuto Passage between Sibuto Island and Simunol Island, Bongao passing through the Sulu Sea to Mindoro Strait into the South China Sea (Manansala, 1997: 7, as quoted in Palma, 2009: 7; Cay, 2010: 59).

Additionally, a separate author of a different chapter in this text outlines factors for consideration by the Philippines, should they indicate a desire to make an ASL designation and thus, submission (Feir, 1997: 12-14, as quoted in Palma, 2009: 9; Cay, 2010: 59)[27]:

[26] During the course of my literature review, I was unable to obtain a copy of this publication. Efforts were made through UPEI's Robertson Library, the inter-library loan system and also the Library of Congress. Palma (2009) and Cay (2010) both make specific reference to the ASL proposal from this publication in their respective works.

[27] While Palma and Cay both cite Feir's list, neither author chose to explain out, or directly elaborate upon it. Palma only reproduces Feir's list, while Cay speaks to the merits of Manansala's two proposed ASLs (as explained above), validated against Cay's own criteria of Legal Issues, Environmental Issues, and Major Security Issues (pp. 59-65).

- the effectiveness of the government to monitor the sea lanes;
- security of the country;
- measures to ensure safe, expeditious and continuous passage;
- fisheries and marine environment;
- inter-island shipping; and
- the possible connection with the Indonesian established ASLP.

3.4 DOMESTIC LEGISLATION TO ESTABLISH PHILIPPINE ASLs

House Bill No. 4153, tabled by Speaker Feliciano Belmonte Jr., was filed in the Philippine House of Representatives on February 8, 2011 (Congress of the Philippines). It was referred to the House Foreign Affairs Committee on February 15, 2011; the committee reported back in June of that year recommending to "approve without amendment" (Congress of the Philippines). The Bill was approved on January 24, 2012, receiving unanimous support (189-0) (Congress of the Philippines). The approved House Bill No. 4153 was sent to the Senate for consideration on January 26, 2012, and was referred to the Senate Foreign Relations Committee (January 31, 2012) (Congress of the Philippines).[28] However, the Senate were also working on an identical proposed piece of legislation.

Senate Bill No. 2738 was tabled by Senator Antonio "Sonny" F. Trillanes IV on March 10, 2011, roughly one month after House Bill No. 4153 was filed in

[28] While tabled by Speaker Belmonte Jr., the Philippine Congress allows Representatives to sign upon bills as co-authors with the principal author's permission. For a full list of the fifty-one Representatives credited with co-authorship: See, Lorelei V. Castillo. "House Approves Establishment of Archipelagic Sea Lanes". Congress of the Philippines. January 3, 2012.

the Lower House (Senate of the Philippines). The Senate Bill (No. 2738) was referred to the Senate Foreign Relations Committee on March 14, 2011, where it was joined by the House Bill (No. 4153) more than ten months later (Senate of the Philippines). Senator Trillanes identified the purpose of his proposed legislation as being to define the maritime boundaries of the Philippines as outlined by criteria set forth in UNCLOS (Manila Standard Times, April 4, 2011). The same media report featured comments by Palawan Rep. (House of Representatives) Antonio Alvarez who is against the bill, citing a "…compromise [of] national security as the Armed Forces ha[ve] no naval or aerial capability to protect the country's sovereignty" (Manila Standard Times). I believe it is conceivable that Alvarez is geographically sensitive, given the close proximity of Palawan to the Spratly Islands, eighteen kilometers to the north (Manila Standard Times). Also, it should be noted that two of the three proposed ASLs exit Philippine waters on either end of the island of Palawan.

Further opposition from Palawan on these bills came in the fall of 2011, as the Palawan Council for Sustainable Development passed a resolution against the proposed legislation (Inquirer Southern Luzon, September 19, 2011). This resolution was further enhanced as it was signed by Palawan provincial governor Abraham Mitra on September 15, 2011. In media reports, Mitra was quoted as stating, "We're afraid its provisions will not be binding to foreign vessels and might prejudice small fishermen, open our seas and the province to more foreign incursions" (Inquirer Southern Luzon).

Further concerns raised in this particular media report included swiftly increasing Chinese naval power in the region and breaching the protected marine areas

in the area including the Tubbataha Reefs National Marine Park (Inquirer Southern Luzon, September 19, 2011). The governor indicated that organized opposition would be applied against the Senate since the House was fully expected to pass its' bill (which it did). He further expressed that Palawan Province would lobby to delay any ASL designations until the national government consulted with the IMO "as to the necessity, propriety and location of the ASL" (Inquirer Southern Luzon).

Given the grave concerns raised by Palawan representatives, the governor's final statement concerning what amounts to IMO approval can be interpreted as technically correct, but it still very alarming. It appears to be a basic contradiction of the concerns of Palawan, aimed at disarming the national government, but at what I would consider a much greater cost. This posturing illustrates the choice facing the Philippines government as when to initiate dialogue with the IMO, the choice which is at the very foundation of this case.

House Bill No. 4153 and Senate Bill No. 2738 are identical. Short-titled the Philippine Archipelagic Sea Lanes Act(s), these propose to amend the existing Republic Act 9522, outlining rights and regulations placed upon vessels of any flag which are exercising passage rights within Philippine ASLs (The Philippine Star, February 3, 2012). The amendments outline the terms of passage rights, in practice mirroring the passage rights as outlined under UNCLOS. This legislation also includes geographic coordinates to designate the intended ASLs and air routes (The Philippine Star). These Bills propose three ASLs for the Philippine archipelago, which are shown in the following figures: Figure 8 (collectively); Figure 9 (ASL #1); Figure 10 (ASL #2); Figure 11 (ASL #3):

Archipelagic Sea Lane #1

ASL #1 is an east-west lane which spans the Balintang Channel within the Luzon Strait, above Luzon Island in the very north of the Philippines, described in the proposed legislation as follows (HB 4153: 7):

> The archipelagic sea lane that may be used for exercising the right of archipelagic sea lanes passage for sailing from the Philippine Sea to the South China Sea or vice versa through the Balintang Channel, is Archipelagic Sea Lane I (…). (Section 11[a])

This specific route was not incorporated in the 1997 proposal (section 3.3, 1997 ASL Proposal). Nor was any route to the north of the island of Luzon, servicing the Luzon Strait, included.

Archipelagic Sea Lane #2

ASL #2 runs east-west through the heart of the Philippine archipelago, interconnecting many different bodies of water, described in the proposed legislation as (HB 4153: 8):

> The archipelagic sea lane that may be used for exercising the right of archipelagic sea lanes passage for sailing from the Philippine Sea to the South China Sea or vice versa through the Surigao Strait, Bohol Sea, Sulu Sea, Nasubata Channel and Balabac Strait is Archipelagic Sea Lane II (…). (Section 11[b])

This lane, ASL #2, appears to match one of the two lanes found in the 1997 ASL proposal (section 3.3). While not having specific waypoints for the 1997 lanes, visual inspection of the two images (1997; 2011) has convinced this author they are indeed identical.

This route in particular was identified by critics to have the potential to place pressure upon the Tubbataha Reef, a UNESCO World Heritage Site; and the Verde Island Passage Marine Corridor, an area of exceptional marine and shorefish biodiversity (Encomienda, 2009, as quoted in Cay, 2010: 61). These areas are amongst the most fragile and biodiverse marine regions found in the world (Encomienda, quoted in Cay). These accusations are refuted by Bensurto Jr., who explicitly expounds:

> The allegation that Tubattaha Reef will be violated and ran over by the proposed ASL is not correct. The axis lines actually do not touch the protective zone of Tubattaha Reef. The extent of the theoretical 20 M limit beyond which, ships traversing the ASL are not allowed to deviate is not a license for ships or the ASL to violate the protective zone of Tubattaha Reef. Tubattaha Reef is protected by law and the ASL 20m limit for deviation does not repeal or modify this particular law. The ASL is by no means a license to disregard the protective zone of Tubattaha. On the contrary, ships traversing the ASL are obligated to respect Philippine law in this regard under the "due regard" principle. (2012: Slide 50)

Archipelagic Sea Lane #3

ASL #3 runs north-south down the Philippine archipelago, hugging the easterly edge of the Eastern Sulu Sea's length, described in the proposed legislation as (HB 4153: 8):

> The archipelagic sea lane that may be used for exercising the right of archipelagic sea lanes passage for sailing from the Celebes Sea to the South China Sea or vice versa through the Basilan Strait, Eastern Sulu Sea and Mindoro Strait, is Archipelagic Sea Lane III (…). (Section 11[c])

A variation of this route appears as the second ASL in the 1997 ASL proposal (section 3.3). The Mindoro Strait leg (between waypoints (G) and (H)) appears identical, after which the ASL cuts back into the middle of the Sulu Sea, running predominately

straight south and exiting the Philippine territory between Sabah (North Borneo) and the western most island of Tawi-Tawi province.

3.5: PROBABLE REASONING BEHIND DOMESTIC LEGISLATION

Domestic Political Agendas/Posturing

Given that elected representatives from two different parties introduced identical legislation in the two houses of the Philippine Parliament within weeks of each other, there is a probability that this is a case of political gamesmanship. However, this possibility seems rather remote given that the House Bill was introduced by the Speaker of the House. The Speaker is a member of the governing party and sits on the President's Legislative Executive Development Advisory Council (LEDAC) (111th LEDAC Meeting Brief). LEDAC met under the current President for the first time on February 28, 2011 (111th LEDAC Meeting Brief). This council drives the government's legislative agenda, and this first meeting served to present the President's legislative priorities to members (111th LEDAC Meeting Brief). The February 28, 2011 meeting presented priority bills which were grouped under five distinct categories. Located under the heading "Sovereignty, Security, and Rule of Law" were two bills of particular interest: The Archipelagic Sea Lane Act and The Act to Define the Maritime Zones of the Republic of the Philippines (111th LEDAC Meeting Brief).

Testing Public Opinion?

Given the above stated facts, it is possible that this legislation was introduced in order to test the will of the people when it comes to the possibility of making a full ASL submission to the IMO. Since both the government and opposition members were quick

to table something during the same session of Parliament, both sides could be interested in gauging public interest in this divisive issue. However, since it is on the Presidential priority legislative agenda, this seems like an unlikely political maneuver by the opposition.

Advancing the ASL Submission Process

The probable reason for this domestic legislation, supported by strong evidence, is the intention of the Republic of the Philippines to move forward towards ASL designation. The Office of the President and Philippine lawmakers have collaborated to advance the ASL submission process by tabling the identical bills. This is a distinct possibility as the Philippine Senate website notes, "Major legislation is often introduced in both houses in the form of companion (identical) bills, the purpose of which is to speed up the legislative process by encouraging both chambers to consider the measure simultaneously" (Senate of the Philippines). Additionally, this tactic is noted to "dramatize the importance or urgency of the issue and show broad support for the legislation" (Senate of the Philippines).

The very fact that the Speaker of the Lower House and a prominent Senator were the two legislators to bring these bills forward could, in fact, mean that these bills are companions. Senator Trillanes does not sit on LEDAC, and is a member of an opposition party. However, none of my research to date has indicated explicitly that these pieces of legislation are companion bills. Notwithstanding this fact, none of my research has explicitly indicated or proven the opposite to be true. The circumstantial evidence would appear to support these bills being companion bills advancing the UNCLOS compliance agenda as set forth by the President.

What impacts will this course of action have?

The impacts of the chosen course of action of tabling draft legislation could be momentous, and possibly negatively so for the government and people of the Philippines. The foremost concerning impact is the basic effect of 'tipping one's hand' in relation to any future ASL submission to the IMO. With national legislation on public record, the Philippines, in essence, have given the major maritime powers and international community a baseline from which to negotiate. Coupled with the fact that an official ASL submission has not been formally confirmed as of yet by the Philippine government, this gives the international community a significant head start, and I argue, further tilts the process against the Philippines before any IMO process even convenes.

Another probable impact surrounds the ongoing work of the Philippine government on a possible ASL submission. The government did establish a working group composed of representatives from various departments and agencies. The very action of tabling this legislation for debate would seem to circumvent and pre-empt the work of this previously struck government working group.

Additionally, I would question whether a piece of legislation is the proper vehicle to advance an issue into the public domain for input, consultation, and comment. A piece of legislation is rather static and explicitly defined which, while allowing for changes through amendment, is not conducive as a starting point for discussion. I would suspect that the Philippine government intends to consult with many stakeholders, including but not limited to citizens, other levels of government and various experts in the course of designing an ASL submission.

Rather than adopt this course of action, this issue could have been introduced by the politicians by means of a position paper (white paper, discussion paper). While two pieces of legislation are currently at Senate Committee and will have witnesses present, such events could have occurred with a position paper as well.

Table 4: Progress of 2011 ASL Legislation	
Feb. 8, 2011	HB 4153 filed in House of Representatives
Feb. 15, 2011	HB 4153 referred to House Foreign Affairs Committee
Feb. 28, 2011	First LEDAC Meeting under President Aquino
Mar. 10, 2011	SB 2738 introduced to the Senate
Mar. 14, 2011	SB 2738 referred to Senate Foreign Relations Committee
Jan. 24, 2012	HB 4153 passes unanimously in House of Representatives
Jan. 26, 2012	HB 4153 sent to the Senate
Jan. 31, 2012	HB 4153 referred to Senate Foreign Relations Committee
Apr. 11, 2012	Start of Scarborough Shoal incident. It would continue to escalate throughout the spring.
Apr. 23, 2012	Notice of meeting for Senate Foreign Relations Committee
Apr. 27, 2012	Public meeting of Senate Foreign Relations Committee

As mentioned earlier, the two pieces of legislation are still before the Senate Foreign Relations Committee. On April 23, 2012, a notice of meeting was given for the Committee to meet on April 27, 2012, to consider three issues:

1. West Philippines Sea Issues (Bajo de Masinloc and Spratly Islands)
2. Maritime Zone Bills
    i. SBN 2723, SBN 2737, HBN 4185
3. Archipelagic Sea Lanes Bills
    i. SBN 2738, HBN 4153

The meeting was a public hearing that was scheduled to last for three hours. As indicated by the meeting notice, the primary issue of concern was the West Philippines Sea Issues; Bajo de Masinloc (Scarborough Shoal) and the Spratly Islands. An escalating incident with the Chinese at Scarborough Shoal during this time would seem to explain the time sensitive scheduling of this Senate Committee. Further, due to the overlapping nature of these three agenda issues, one can ascertain the majority of the discussion at this meeting dealt specifically with the escalating incident.

Indeed, The Manila Times from April 27, 2012 featured an article on this meeting entitled "Senate tackles Panatag dispute." Within the article, Committee Chair Senator Legarda was attributed as saying, "the hearing will focus on the legal and political repercussions arising from the impasse." The article further reports that government and private sector officials were invited "to provide inputs and updates on the steps the country is planning to take to resolve the impasse."

3.6: POSSIBLE FACTORS INFLUENCING THE PHILIPPINES ASL PROCESS

The effect of the Indonesian experience

The matter of a partial submission is one of the possible main concerns for the Philippines around ASL designation and submission. The continued use of non-designated routes by maritime states within Indonesia is thought to "effectively quarantine Indonesia's behaviour" [read: opposition to the partial concept] (Kaye, 2008: 17). Such actions do not go unnoticed by the greater international community, including other mid-ocean archipelagic states. As I shall discuss as part of a subsequent variable, the United States, in particular, chose to take direct maritime and aviation action in a government program to emphasize American views on claims they feel are excessive and unjustified to which many states are subjected. It certainly must have an impact on the minds of policy makers to see Indonesia subject to such actions, even after a long and drawn-out partial "victory."

Republic of the Philippines Comment on IMO Indonesian Process

The Philippines delegation made two comments when the MSC of the IMO approved the GPASLs and the partial Indonesian proposal. The Philippine delegation gave notice that it may, in the future, propose amendments to the General Provisions on Ships' Routing; and it also explicitly stated that the discussions and agreements on the designation of Indonesian's archipelagic sea lanes should exclusively apply to the Indonesian archipelagic sea lanes and should not be interpreted as creating a precedent for future applications for the designation of archipelagic sea lanes (Beckman, 2007: 127).

The Philippines were clearly concerned with the direction of the process considering the Indonesian proposal. The Philippine statement was the chance to formally put on the official record their views on this process as individualistic to Indonesia's proposal, and not as a precedent setting direction. Owing to the fact that the issues were decided in inter-sessional meetings between Indonesia and the user states, and not in the course of the sanctioned IMO process, the Philippines refused to agree to be bound by the results of these negotiations (Batongbacal, 2004: 59). It is unclear as to whether the Philippines would be bound by precedence to the IMO process experienced by Indonesia.

IMO Influence

In the framework of "IMO Influence" the biggest concern for the Philippines is the possibility of a partial proposal ruling. Given the historical context of the operation of user states in the waters within the Philippine archipelago, there is a real potential for multiple lanes to be considered before the IMO.

Coquia (as quoted in Kwaitkowska & Agoes, 1991) ruminated that any consideration of Philippine straits as those employed for international navigation as viewed through UNCLOS would "…practically open all waters within the Philippine archipelago… **This would certainly nullify the very concept of the archipelagic State.**" [emphasis added]

This analysis has proved very telling albeit in slightly different parameters. While Coquia's forewarning in the context of straits for international navigation did not come to be, the issue of a partial proposal through the IMO presents a very

similar and realistic danger for mid-ocean archipelagic states. This danger is that there are numerous routes which have been utilized for international navigation within the archipelagic waters of the Philippines. Hence, there is a very good chance that regardless of the number of routes brought forward in any Philippine submission, there will be a multitude of additional possible routes which could be advocated for by the larger international community.

Bensurto Jr.'s conference presentation points would appear to clarify the Republic of the Philippines' position and thought process concerning the role of the IMO in a Philippine designation of ASLs and possible formal submission. He confirms that the Philippines will submit their designated ASLs to the IMO (2012, Slide 59). He also offers his counter opinion on the subject of domestic ASL designation prior to IMO approval being "premature" citing:

> the designation of ASL 1) is not only necessary but it is also urgent for the Philippines to protect its security and marine environment; and 2) for which reason, the designation of sea lanes as a valid exercise of a state's substantive and inherent right to preserve itself could not be negated by the procedural requirement under Article 53.9.[29] (2012, Slide 52)

The main point of Bensurto Jr.'s argument is that UNCLOS, specifically Article 53(9), does not explicitly state that IMO approval must precede the designation of ASLs by a mid-ocean archipelagic state (2012, Slide 59) Thus, as argued in a following slide:

> As such, the taking of a different procedure to comply with international law will not necessarily give the IMO the authority not to adopt the sea lanes earlier designated by an archipelagic state. In the first place, IMO is not empowered to approve or disapprove designated sea lanes. Its exact function under Article 53.9

[29] The referred to procedural requirement under UNCLOS Article 53(9) is the IMO adoption of ASLs in consultation with the submitting mid-ocean archipelagic state.

> is specifically limited to "may adopt only such sea lanes and traffic separation schemes as may be agreed with the archipelagic state." (2012, Slide 60)

Bensurto, Jr. concludes his position (and one must surmise, the Republic of the Philippines position concurrently), that the legitimacy of any ASL designation, partial or full, must merely pass the test of "command[ing] respect from the international community."

UNCLOS Compliance with Territorial Boundaries

The history of the Philippines and its boundaries is a complex one. The Republic of the Philippines claims successor-state status from the United States as received via treaty from Spain (Bautista, 2011: 44). The Republic of the Philippines stakes its claims to its territorial boundaries by means of three treaties: the Treaty of Paris (December 10, 1898), between Spain and the United States; the Treaty of Washington (November 7, 1900) between the United and Spain; and the Treaty concluded on January 2, 1930 between the United States and Great Britain (Bautista, 2008, as quoted in Bautista, 2011: 38).

Throughout the entire UNCLOS process, the Philippines made repeated attempts for acknowledgement and recognition of their international treaty limits under the international law principle of historic title (Ingles, 1983, as quoted in Bautista, 2011: 44). However, due to objectives by the maritime powers, the United States chief among them, the Philippine efforts were not successful. Bautista (2011: 35) points out the two main reasons why the boundaries are contested in international law, and generally not accepted by the greater international community. He first highlights the absolute position of Philippines government that their national boundaries are the ones found in

the 1898 Treaty of Paris. The second reason is the more contentious fact that the Philippines view their waters as internal within these baselines, complete with full sovereignty.

Additionally, prior to RA 9522, some of these baselines were too long and collectively covered too large of an area to fit the archipelagic regime under UNCLOS, which limits lengths of individual baselines and total water to land ratio at 9:1 (Article 47(1)). In this situation the Philippines are not alone, as Tsamenyi, Schofield and Milligan (2009: 445, as cited in Cay, 2010: 69) point out Cape Verde, the Dominican Republic, and the Maldives are also all identified as mid-ocean archipelagic states that have enacted baselines which contravene Article 47 of UNCLOS. This, in effect, would void the archipelagic waters claimed by the said states, and as such, would not permit ASL submission to the IMO.

An amending of the baselines to bring them into UNCLOS compliance was advocated for by Batongbacal in the year prior to the introduction of RA 9522. He writes:

> Under UNCLOS, the Philippines can enclose even much larger bodies of water than within the treaty limits, and place them under internationally recognized sovereign rights and jurisdictions. This includes sovereignty over archipelagic waters, which can extend farther than what non-archipelagic states are entitled to. For this, we need to define the baselines along our coast and then extend the maritime zones from them. We can enclose the Sulu Sea and all inter-island waters without question, even if beyond the 12 nautical miles from shore. Practically all of the important living and non-living resources and presently possible uses of the ocean, from fishing to petroleum exploitation, would fall within those maritime zones and our control over them would not be subject to question so long as we abide by UNCLOS. These maritime zones encompass a much greater area than was ever included in the International Treaty Limits (2008: 4).

Batongbacal's passionate argument raises several valid points, the most predominant of which is international recognition and legitimacy of the sovereignty and control over the maritime space and marine and seabed resources.

Batongbacal also reminds readers that such control is conditional based on adhering to UNCLOS. He further explains such rights come with a trade-off, the very essence of the debate and the compromise found in the previously explained UNCLOS, Part IV:

> We are to allow the passage of foreign vessels, including submarines, through those waters under certain conditions, but only as long as they are only passing through and not making a call to any port. If they do anything not connected with simply passing through, then we have the right to exercise our sovereignty and jurisdiction (2008: 4).

UNCLOS Compliance with the Republic of the Philippines Constitution

At the national level, the Philippines Constitution has undergone a number of redrafts and reissues since independence. However, one of the few constants that has remained in the document is the archipelagic concept. A useful example is found below in the most recent version of the Philippine Constitution:

1987 Philippines Constitution

Article 1

> The national territory comprises the Philippine archipelago, with all the islands and waters embraced therein, and all other territories over which the Philippines has sovereignty or jurisdiction, consisting of its terrestrial, fluvial and aerial domains, including its territorial sea, the seabed, the subsoil, the insular shelves, and other submarine areas. **The waters around, between, and connecting the islands of the archipelago, regardless of their breadth and dimensions, form part of the internal waters of the Philippines.** [emphasis added]

The Constitution of the Philippines has long been, and continues to be, non-complaint with UNCLOS.[30] The archipelagic concept embodied through the definition of national territory which includes internal waters, is fully enshrined in law. Internal waters restrict any "innocent passage" rights and also require pre-notification by all vessels.

The two opposing viewpoints of this issue are quite divisive for the Philippines. A root cause for this division can be traced back to the independence movement itself. The government of the newly independent Philippines pursued a very strong nation building policy which was very much centered upon the archipelagic concept. The unified archipelago of the independent Philippines was championed as a central theme which helped to stabilize the state.

Domestic Public Opinion

Thus, the people of the Philippines are very hesitant to "lose" what they view as their internal waters. To subscribe in its entirety to UNCLOS would be to have archipelagic waters, not internal waters. Archipelagic waters are still sovereign waters; however as explained earlier they have a few conditions to sovereignty attached (passage rights). It appears that the collective public conscience and popular opinion are very much against this trade off.

Much like Indonesia, the Philippines has long championed its belief in the archipelagic concept, a concept inclusive of the principle of full sovereignty over its waters. Given the long standing fight since independence against numerous state

[30] The United Nations has the 1973 Philippine Constitution on file, rather than the 1987 version. The specific section on file is the definition of "National Territory," as illustrated by Article 1 (1987). I suspect the reason why the previous Constitution (1973) is on file, is that while the Constitution was updated the definition of "National Territory" has long remained the same.

parties, the people of the Philippines have yet to warm up to a weakening of their perceived sovereignty. This point was further illustrated with formal opposition to the passing of RA 9522 (2009) as noted in a previous section.

Time and Expense for ASL Proposal

Clearly, should the Philippines choose to submit an ASL proposal to the IMO they will want to do it once, and do it right. Given what is at stake, the surveying and other preparatory work will be immense. It is clear that the geographic alignment and composition of the Philippine archipelago is unique and vastly different from the Indonesian archipelago. The Philippines government will want to have a watertight proposal and be armed with as much pertinent and relevant data as it can accumulate in order to speak to and defend its proposal successfully. There is a need for a strong political will to broach the divisive ASL issue, and take action to invest significantly in manpower, technology, and expertise in order to best determine the possible routing for ASLs. The government of the Philippines has engaged working groups in the past surrounding this issue, but this research in unable to confirm if there has been any investment in the required technical preparatory work.

Philippine National Marine Policy (1994)

In 1994, the Philippines enacted a National Marine Policy (NMP) aimed to "exercise its stewardship responsibilities, harmonize existing laws and ocean uses, promote coordination among government agencies concerned with the use of maritime space and resources, and maximize benefits from utilization of ocean resources within sustainable limits" (Cicin-Sain, 2004, as quoted in Garcia, 2005: 14). The NMP

championed four core criteria for consideration in all marine policy decisions (Garcia, 2005: 56):

- Development planning should take into account the archipelagic characteristics of the country.
- Coastal marine areas are viewed as the locus of community, ecology, and resources.
- **Implementation of the LOSC [UNCLOS] must be consistent with national interests as prescribed in the NMP.** [emphasis added]
- Concerned and affected sectors actively participate in a coordinative and consultative planning and policy-making process through the Cabinet Committee on Maritime and Ocean Affairs.

Garcia reports that the NMP "views [UNCLOS] as a legal reform agenda and a valuable input in defining the geographic scope of the country's ocean policy." Hence, it would seem that the NMP has the opportunity to encourage reformation of the Philippine legislation to bring it in line with UNCLOS, and furthermore, clarifying the maritime boundaries of the Republic.

Inter-Island Transport/Domestic Economy

Batongbacal points out that as of 1997 the Philippines transports up to 98 percent of its domestic trade in goods via the marine based inter-island shipping network (1997, as quoted in Batongbacal, 2004: 51; 2005: 8). Given the centrifugal characteristic of archipelagic states, this figure would represent a significant density of domestic marine

shipping traffic in already busy waters. This characteristic is enhanced due to Santiago's already noted observation of the Philippines containing two large centers, these being Luzon and Mindanao.

The Philippine economy is also very reliant on marine industries including fishing. As noted by Toganivalu of Fiji at a 1974 UNCLOS III session, archipelagic peoples are the "farmers of the sea" (UNCLOS III Official Records, as quoted in Ghosh, 1987: 905). The Philippines 2002 Census of Fisheries tallied about 1.8 million municipal and commercial fishing operators; within this figure 1.752 million are individual, municipal fishers (Garcia, 2005: 27).[31]

The historical importance of the inter-island maritime network cannot be overstated. Movement of people and goods by water is the key linkage for the Philippine archipelago. The maritime mode of transport was, and continues to be, the only viable transportation network amongst the islands of the Philippines. Thus, the economy of the Philippines is very reliant and possibly vulnerable to disruption of the movement of persons and goods on the crowded waters of its archipelago. This fact, coupled with potential impact on the commercial and non-commercial domestic fisheries, should reinforce the challenge and hazards of ASL designation.

As a probable benefitting counterpoint, it was highlighted by Tangsubkul and Fung-wai (1983: 869) that Indonesia and the Philippines possess the highest ratio of water to land in the Southeast Asian region, coupled with the least developed fisheries. Based on this, they identified that the adoption of UNCLOS and 200 NM EEZ would

[31] Municipal fisheries refers to vessels less than three gross tons, non-vessel fishing and aquaculture activities.

allow for a greater prospect of enhancements in fishing gear, techniques, conservation methods and industry management (Tangsubkul and Fung-wai, 1983).

Routing Concerns

Should the Philippines decide to formulate a submission for consideration; a number of factors identified in this chapter will also need to be weighed against the routing of any ASLs. It is noted that conceivable ASLs routes would be crossing inter-island transportation routes, many fishing grounds, as well as large, commercial fishing operations (Bateman, 2007: 46).

Environmental Concern

The Philippines is known to be a unique eco-system filled with an impressive number of marine and coastal species of flora, fauna and habitats. Beckman (2007: 128) highlights two areas of great concern to the Philippines in the consideration of designating ASLs: the narrow width of the existing sea lanes and the environmental hazards to the uniquely bio-diverse marine areas of the archipelago. In a recently released report, the United Nations Environmental Programme reported that the Philippines are estimated to have 1,170 Marine Protected Areas (MPAs) of various scales and governance (UNEP National and Regional Networks of Marine Protected Areas: A Review in Progress).

Tsamenyi and Mfodwo (2001: 37) point out that growing concerns surrounding maritime shipping traffic and the impact and risks to the marine environment will in their minds lead to additional regulation at all levels, thus further restricting the traditional freedoms of navigation. These authors note that such restrictions will likely

predominately occur through the efforts of archipelagic and coastal states to project their regulatory influence further (literally and figuratively) over their marine areas.

One idea which was advanced in 1996 by Ambassador Alberto A. Encomienda, the Secretary-General of the Maritime and Ocean Affairs Center within the Philippine Foreign Affairs Ministry, was to designate the entire Philippines archipelago as a Particularly Sensitive Sea Area (PSSA) (The Philippine Star, December 15, 2006; Cay, 2010: 61). This designation would have forced the IMO to take action to offer special protection due to vulnerability to shipping activities.[32] The idea of a PSSA designation was discussed, but it did not progress from initial discussions as the Philippines has shifted its maritime policy towards UNCLOS compliance and ASL designation.

Regulatory & Enforcement Capacity

A factor of significance for both the Philippines and the greater international community is the Philippine ability to regulate and enforce the ASLs and the attached passage rights. This ability is in regard to the access and safe passages of the lanes. Furthermore, the waters of the greater Southeast Asian area are an area of greater concentration for piracy. Historically, International Maritime Bureau (IMB) figures ranging from the mid-1990s to the early years of the new millennium indicated that around one half of all maritime piracy acts in those years occurred in Southeast Asian waters (Bradford, 2011: 190). More recently, IMB statistics from 2010 place this area second only to the Horn of Africa in piracy and armed robbery occurrence, with seventy-one recorded cases (Bradford, 2011).

[32] http://www.imo.org/ourwork/environment/pollutionprevention/pssas/Pages/Default.aspx. The IMO defines a PSSA as an area that needs special protection through action by IMO because of its significance for recognized ecological or socio-economic or scientific reasons and which may be vulnerable to damage by international maritime activities.

Political Geography of the Philippines

This external influence (political geography) is also known as "geopolitics," a term that invokes the idea of the various facets of geography combined with sub-fields of political science. Consulting the texts, Cohen (1973: 6) calls political geography "the spatial consequences of the political process". A Dictionary of Geography defines political geography as "The study of states, their frontiers and boundaries, their inter- and global relations, their contacts and their groupings; the variation of political phenomena from place to place, considered with other features of the earth as the home of Man" (Monkhouse, 1970: 274).

The archipelagos of both Indonesia and the Philippines are situated relatively close together at the junction of the North Pacific Ocean, the China Seas, and the Indian Ocean (Figure 12). This strategic location finds them intersecting many international shipping lanes. Ghosh (1987: 905) pointed out that a detour around Indonesia would add over three thousand miles to a sea journey. In addition, Amerasinghe (1974: 559) noted during the height of UNCLOS III that closure of the Indonesian and Philippine maritime areas to international shipping would hamper access between the Indian and Pacific oceans, making international maritime shipping more complicated and expensive. The close proximity of these archipelagic states to the Asian mainland, India and the Bay of Bengal, and Australia guarantees their economic importance will only continue to grow as the Asian economy expands and emerges.

This location also puts Indonesia and the Philippines right in the transit corridors of the navies of the world (Figure 13). Additionally, there are strategic concerns for the western military powers with many operations occurring on the East African and Middle

Eastern area. Indeed, it has been noted that the strategic situation has, in fact, grown and intensified in the age of globalization and nuclearization (Chew, 2007: 19). Some analysts have also argued that the strategic importance has increased since UNCLOS has entered into force (New York Times, May 16, 1996). As identified and discussed by Bateman (2007: 47):

> [T]he Philippine archipelago sits astride major shipping routes between the Americas and southern China and Southeast Asia, as well as between northern Australia and the Lombok Strait and Northeast Asia. The narrowness of some straits highlights the potential difficulties in developing axis lines and applying the ten per cent rule in UNCLOS Article 53(5). Other international shipping routes lie immediately to the north of the Philippines through the Luzon Strait between Taiwan and the Philippines, and to the south between Mindanao and Indonesia. Parts of these routes pass through Philippine archipelagic waters.

Physical Geography of the Philippines

A second external influence tied into geography is the physical geography of the Philippines. A Dictionary of Geography (1970) defines physical geography as "[t]hose aspects of [geography] which are concerned with the shape and form of the land-surface, the configuration, extent and nature of the seas and oceans, the enveloping atmosphere, the thin layer of the soil, and the 'natural' vegetation cover" (1970: 265). The marine spatial dimension of physical geography of the Philippines, dealing with the condensed concentration of the entire archipelago, is probably the most relevant issue in physical geography to this case. Additionally, a sub-element of physical geography deals with the classification and functional purpose of many straits in Philippine waters for international navigation (Figure 14). Palma (2009: 7) classifies five key routes of international navigation out of the many that run through the Philippine territory[33]:

[33] Palma classifies the Luzon, Surigao, and Balabac routes as "critical for military activities," while citing the other areas as areas of international tanker usage.

- Luzon Strait-Bashi Channel-Balintang Channel, and Babuyan Channel;
- Verde Island Passage-San Bernardino Strait;
- Mindoro Strait-Basilan Strait-Sibutu Passage;
- Surigao Strait-Balabac Strait; and
- Balut Channel

Australia

Australia is in a unique position of being strategically and economically dependent upon the sea lanes through the Southeast Asian archipelagos (Warner, 2000: 170). Over ninety-five percent of Australia's international import volume is via sea; and over ninety-nine percent of Australia's communications data traffic is via fibre optic submarine cables (Kaye, 2008: 1). Olsen (1996: 18) additionally illustrated the importance of Indonesia to Australia identifying that sixty percent of Australian marine traffic transits through Indonesia.

While its fortunes are associated more so with Indonesia, there is still importance for Australia in the Philippine archipelago. Australia continues to be engaged in Southeast Asia, but still relies on strategic allies such as the United States to assist in ensuring that its regional foreign policy interests are best served.[34]

The United States of America[35]

The United States has long been involved in Southeast Asia, dating back as far the Spanish-American War in the late nineteenth century. America in fact, took

[34] The American and Australian governments recently came to an agreement that sees a U.S. military presence once again on the continent of Australia. United States Marines are serving in Darwin, Northern Australia and indications are the size and capacity of the American contingent will continue to grow.
[35] See, especially, Tommy Koh. "United States and Southeast Asia." The Asia Foundation (2008).

possession of the entire Philippine archipelago as an overseas territory under the Treaty of Paris in 1898 (CIA World Factbook). They would not relinquish control of the Philippines until after the completion of World War II (CIA World Factbook).

Given the United States' prolonged period of colonial dominance and spearheading of the Allies' actions in the Pacific theatre during World War II, American influence has been quite significant across this region, and specifically in the Philippines. The initial relationship after American negotiation with the Spanish is rather complicated. The Philippine people had waged resistance to the Spanish, and were assured the Americans were looking to free them, just as the Americans had done with the Cubans. Thus, once American colonial rule was imposed, a bloody and very bitter civil war erupted which the Americans were able to squash. After this initial period, the relationship between the Philippines and the United States in the mid-twentieth century appears to have been strong. The Americans had returned and liberated the Philippines from Japanese occupation. In the post-war period, independence was given to the Philippines quite willingly by the Americans. In fact, as Wight (1978: 230) notes, within the decolonization period following World War II, with all imperial powers and their colonies, only the Philippines received independence "granted with entire spontaneity by the imperial power." While this view ignores that many small islands were similarly given away, it does illustrate the nature of the colonial relationship between the United States of America and the Philippines in the aftermath of World War II.

With Philippine independence this close connection continued, especially around the area of external security. This formalized connection dated back to the eight party Southeast Asian Collective Defence Treaty, signed in September 1954 in Manila.

Indeed, it was noted around this time that the United States played the "unprecedented role of maintaining the new buffer zone round the borders of resurgent China, which had become the principal Asiatic front in the [C]old [W]ar, and especially of trying to strengthen the weak states of South-east Asia, lying between China in the north, India in the west and Australia in the south" (Koh, 2008: 39). As further noted by Tommy Koh:

> Since the end of World War II, Southeast Asia has regarded the United States as a security guarantor of the Asia-Pacific and welcomes its forward deployed military presence in the region. America's security presence has ensured that Southeast Asia has not been dominated by any one power; a core objective of U.S. security strategy in the region (2008: 39).

The maritime mobility afforded to the United States and to its navy would have been next to absolute during this period. The central principle around which this U.S. maritime power has been built is the autonomy of the high seas, which is known as freedom of navigation.

Historical American Foreign Policy towards the Philippines

America's long standing interest in maritime mobility fits nicely into the American foreign policy ideology of containment of the U.S.S.R., followed by a focus on the Middle East (Iran containment, Iraq and Afghanistan conflicts), and now the current foreign policy priority of China and Southeast Asia. This containment method allows the U.S. to push out its assets and borders through permanent military instillations much closer to the states in question. These instillations allow for garrisoned military members and operating or supporting platforms for both naval and air assets.

Thus, with the continued concentration on the Middle East and Eurasia, the waters of the Indonesian and Philippine archipelagos are vastly strategic areas of potential operation for the United States. The Americans had long maintained bases in the Philippines, the most important of them being Clark Air Force Base and Subic Bay Naval Base, and had taken sole responsibility for external security of the Philippines throughout its independent history (Storey, 1999). These bases were also important to the Philippine economy, being the second largest employer in country, trailing only the government (Royle, 2001: 144).

The Philippine-American military relationship changed significantly after the close of the Cold War (Storey, 1999). Philippine opinion became split once the threat of the Cold War had passed as to the necessity of housing American installations and personnel.[36] As described by Storey (1999):

> In 1991, volcanic ash from the Mount Pinatubo volcano rendered Clark Air Force Base unusable, and the United States withdrew. Although the United States military wanted to continue to use Subic Bay, the Philippine Senate voted to terminate the U.S. lease over the bases in September 1991. Washington chose not to re-negotiate the treaty as the closure of the bases fitted in with plans to "down-size" U.S. forces in the region following the end of the Cold War. In September 1992, the Americans handed over Subic Bay to the Philippine Government, and two months later, the last U.S. military personnel left the Philippines.

U.S. Position on Treaty of Paris/Philippine Baselines

The United States never supported the Philippine efforts to have the baselines as defined under the Treaty of Paris (1898) recognized by the international community. Following the declaration made by the Philippines in 1986 upon signing UNCLOS,

[36] Storey, Ian. "Creeping Assertiveness: China, the Philippines and the South China Sea Dispute." Contemporary Southeast Asia. Vol. 21. No. 1. (1999). Page unknown.

which reaffirmed their expanded baselines, the U.S. made their own responsive statement:

> The Government of the United States does not share its view concerning the proper interpretation of the provisions of those treaties, as they relate to the rights of the Philippines in the waters surrounding the Philippine Islands. The Government of the United States continues to be of the opinion that neither those treaties, nor subsequent practice, has conferred upon the United States, nor upon the Republic of the Philippines as successor to the United States, greater rights in the waters surrounding the Philippine Islands than are otherwise recognized in customary international law. (Roach and Smith, 1996: 221, as quoted in Bautista, 2010: 122)

UNCLOS & Non-Signing

In the course of the UNCLOS negotiations, the major maritime powers (U.S., U.S.S.R. and U.K.) were very hesitant to yield any ground around the issue of mid-ocean archipelagic states. As previously mentioned, the most contentious issue surrounded the achievable balance between the long entrenched international law position of freedom of navigation by user states over the waters in question, against the archipelagic states' position of restrictive access and increased sovereignty by themselves.

The reservations of the maritime powers were stated from the beginning of the process. The United States made their position explicitly clear in a 1958 press release:

> If you lump islands into an archipelago and utilize a straight baseline system connecting the outermost points of such islands and then draw a twelve-mile area around the entire archipelago, **you unilaterally attempt to convert into territorial waters or possibly even internal waters vast areas of the high seas formerly freely used for centuries** by the ships of all countries. [emphasis added] (Dubner, 1976: 41)

In the early 1980s, Mr. Elliot Richardson (Special Representative of the President for the Law of the Sea Convention and head of the U.S. delegation to UNCLOS III), outlined the five main naval interests for the U.S. (Booth, 1985: 63-67):

- Limiting the expansion of the territorial sea
- Maintaining passage through straits
- Maintaining passage through archipelagic seas
- Maintaining traditional rights in the areas covered by the new EEZs
- Creation of a carefully balanced and compulsory system of dispute settlement

It is important to also point out once again that the contention around this balance was hinged on the impact on the military and governmental vessels of the maritime powers. In the course of UNCLOS negotiations, the foreign policy interests of military freedom of maneuverability were very much front of mind, rather than any considerations around trans-national shipping.[37] However, as noted in the previous chapter, a compromise was struck and Part IV of UNCLOS mandating archipelagic regimes became a reality. Nonetheless, as forcefully stated by Galdorisi (1997: 144), "Preservation of the rights of navigation and overflight for U.S. military ships and aircraft, other U.S. flagged craft, and other U.S. owned ships and aircraft has always been a top priority – if not the top priority – of United States oceans policy."

It is also timely now to note that the United States has yet to sign on to the Law of the Sea Convention. While their refusal specifically centers on the part which deals with sea-bed mining, they also do have noted reservations around aspects of the

[37] While strategic considerations were a priority in relation to foreign policy, the issue of shipping access was still important and often referenced. See Hollick (1981), U.S. Foreign Policy and the Law of the Sea.

archipelagic regime including certain states baselines and maritime claims. The refusal to sign, which dates back to the Reagan administration, may have, in recent years, come closer to ending. The administrations of both George W. Bush (Bellinger III, 2006: 4) and Barack Obama (Bower and Poling, 2012: 1) have voiced their desire to see Congress vote to support the signing of UNCLOS.

As noted by Bellinger III (2006: 8): "As the nation with the world's largest navy, an extensive coastline and a continental shelf with enormous oil and gas reserves, and substantial commercial shipping interests, the United States certainly has much more to gain than lose from joining the Law of the Sea Convention." Professor John Norton Moore, an American Law of the Sea expert at the University of Virginia's Center for Oceans Law and Policy, believes that UNCLOS is at its core a product of U.S. national interests and highlights three key reasons for continual U.S. observance of UNCLOS: "restoring U.S. oceans leadership, protecting U.S. oceans interests, and enhancing U.S. foreign policy" (Miheva-Natova, 2005: 29). However, regardless of the official position of the U.S. and the status of its signing, it is still in good faith adhering to the principles of UNCLOS. This is not likely to change into the future, nor will their expectation that the Republic of the Philippines will submit an ASL proposal for consideration at some point.

FON Program

As noted previously, the UNCLOS process was an exercise in agreement through consensus, thus allowing the maritime powers to veto any measures not suiting them. The United States did exactly this when faced with the issue of the maritime boundaries of the Republic of the Philippines, one which was founded in the 1898

Treaty of Paris and, as discussed earlier, advanced under the grounds of historic title (Van Dyke, 1985, as quoted in Bautista, 2011: 44). This disapproval of the Philippine proposal removed it from the discussion and scuttled any chance of the wider international acceptance that was sought. However, this is not the only method to which the United States has resorted to in order to show their displeasure or contrary view to another state's position.

The United States Navy acting with direction from the Defense Department and the State Department began a formalized program termed Freedom of Navigation in 1979. The U.S. State Department website (http://www.state.gov/e/oes/ocns/opa/maritimesecurity/) states the following explanation for the FON Program:

> U.S. policy since 1983 provides that the United States will exercise and assert its navigation and overflight rights and freedoms on a worldwide basis in a manner that is consistent with the balance of interests reflected in the Law of the Sea (LOS) Convention. The United States will not, however, acquiesce in unilateral acts of other states designed to restrict the rights and freedoms of the international community in navigation and overflight and other related high seas uses. The FON Program since 1979 has highlighted the navigation provisions of the LOS Convention to further the recognition of the vital national need to protect maritime rights throughout the world. The FON Program operates on a triple track, involving not only diplomatic representations and operational assertions by U.S. military units, but also bilateral and multilateral consultations with other governments in an effort to promote maritime stability and consistency with international law, stressing the need for and obligation of all states to adhere to the customary international law rules and practices reflected in the LOS Convention.

For an explanation on the inner-workings of the program, we turn to Greene (1992), himself a serving U.S. Naval Officer at the time:

> Each year the State Department prepares a target list of those nations making excessive territorial sea claims and confers with the U.S. Navy about which nations on the list will be subject to a challenge during that operational year. The Navy usually has a free hand in how it will implement the program, except where politically sensitive areas (PSA) are concerned… in those cases the State Department requires prior coordination. Simply put, this program involves United States military assets deliberately encroaching on territory claimed by sovereign states which the Americans do not view as legitimate claims under UNCLOS. (1992: 14)

While this explanation is now over twenty years old, it sheds some light as to how the program was operated. Also, while some slight change in personnel, process and policy (politically sensitive areas) is inevitable, the shared jurisdictional design, and checks and balances between the U.S. Department of Defense and U.S. State Department have remained. The FON Program is applied to claims from many states, including allies, and is vetted through annual report to Congress, made by both the United States Navy and the State Department (Kaye, 2008: 38).

FON Program Example (Indonesian Bawean Island F-18 Incident)

In July 2003, it was reported that the American carrier the USS Carl Vinson launched five F-18s while in Indonesia's archipelagic waters, some 300 kilometres outside of the designated ASL (Far Eastern Economic Review, July 17, 2003). [38] The Indonesian Air Force scrambled F-16 fighters to intercept the American aircraft, and the incident received significant attention domestically in Indonesia (Bunturo, 2010: 186). The incident was further fueled by disagreement over the rights and requirements of the Indonesian state and the American vessels and aircraft. Additionally, the Indonesian

[38] This is a brief description of the incident. For a full account, See: Buntoro, 2010: 186-192.

government claimed the American F-18s violated international law by means of over flight of Bawean Island (Figure 15) (Bunturo, 2010: 191). An article in the Far East Economic Review (July 17, 2003) quoted a senior US official who termed the incident "normal flight operations." In a corresponding report, former Indonesian Ambassador-at-Large for the Law of the Sea, Hasjim Djalal indicated the Americans had not broken any international laws, due to Indonesia's partial ASL submission and designation, and lack of east-west sea lanes (The Jakarta Post, July 7, 2003). Given the stated facts of this incident and the American response, it is clear that this was a deliberate action that was carried out under the FON program.

FON Program and the Philippines

Table 5: US FON Operations (Philippines) – 1997-2011[39]

Fiscal Year[1]	Multiple Operations (X) [Figure if Given]	Excessive Maritime Claim Challenged
1997	**X [47]**	Excessive straight baselines; claims archipelagic waters as internal waters
1998	**X [32]**	Excessive straight baselines; claims archipelagic waters as internal waters
1999	**X [34]**	Excessive straight baselines; claims archipelagic waters as internal waters
2000	**X [28]**	Excessive straight baselines
2000-2003	**X**	Excessive straight baselines; claims archipelagic waters as internal waters
2004	**X**	Excessive straight baselines; claims archipelagic waters as internal waters
2005	**X**	Excessive straight baselines; claims archipelagic waters as internal waters
2006	**X**	Excessive straight baselines; claims archipelagic waters as internal waters
2007	**X**	Claim of archipelagic waters as internal waters
2008	**X**	Excessive archipelagic baselines
2009	**X**	Excessive archipelagic baselines
2010	**X**	Excessive archipelagic baselines
2011	**[0]**	**No Philippine FON operations**

[39] All data taken directly from US Department of Defense – Freedom of Navigation Program Operational Assertions.

The data contained in the table reveal a few interesting trends and facts surrounding the U.S. FON program as it relates to the Philippines. While there have not been flashpoint incidents receiving international attention like the Indonesian examples, there is a clear trend of FON operations directed at the Philippines happening in significant numbers. The Philippine maritime claims specifically targeted by the FON program over these years are the archipelagic baselines and the Philippine interpretation concerning the sovereignty of their archipelagic waters.

For the first year of data reported in Table 5 (Fiscal Year 1997), the United States military conducted an operational assertion through Philippine claimed waters at an average of close to one transit per week (forty-seven occurrences). As stated in the FON reports, these transits were carried out under the respective right of innocent passage, transit passage or high seas freedom. The three successive years in which figures were obtained, show a slight decrease from FY 1997, but a rather constant level of roughly thirty operational assertions a year.

Unfortunately, the change in reporting method in FY 2000 halted the disclosure of the specific number of operations. The FY 2000-2003 summary report and subsequent years only identify if more than one operation was carried out against the respective country in that fiscal year. Thus, this data shows, for ten consecutive years (FY 2001-FY 2010) for which no hard data are available, the FON program carried out more than one operational assertion against Philippine claims every year until 2010.

The most interesting and timely discovery in this FON data is that in FY 2011, the United States conducted **zero** FON operational assertions within Philippine claimed

territory. This does not mean that the United States has changed its position on Philippines' maritime claims; the U.S. continues to not recognize these claims. On January 14, 2011, then Defense Secretary Robert Gates, during a speaking engagement at Keio University in Tokyo remarked, "A fundamental principle of the United States virtually since its founding is freedom of navigation. (…) We feel very strongly and it is enshrined in the UN Law of the Sea Treaty. (…) [This is] An example where it would be very difficult for us to compromise" (via Youtube, US Department of State – East Asia & Pacific Media Hub).

However, for the moment it would seem that larger strategic concerns (i.e. China) and the cultivating of a more prosperous and advantageous relationship with the Philippines has taken the state off the FON program roster. FY 2012 data was not accessible at the time of writing, but it would be interesting to see if this trend has continued. Also it is important to note that, with the passing of RA 9522 (2009), the Philippines have made their baselines compliant and started on the course of full UNCLOS compliance.

Bradford (2011: 183) states the key strategic aim of American maritime operations is "…to sustain credible combat power in the Western Pacific and Arabian Gulf/Indian Ocean so as to preclude attempts at interrupting vital sea lines of communication and commerce." The action of maintaining such a deterrent force is a useful pawn to be wielded and, should the need arise, could also be deployed as a proactive or reactionary force. Additionally, as concluded by Bradford:

> The United States is a resident power in the Indo-Pacific and the free flow of commerce to, from, and within that region is vital to the prosperity of Asia, the United States and the world. Therefore, the United States has clearly established its commitment to sustaining safe and secure sea lanes open to all. (2011: 203)

Concluding Thought

The Southeast Asian area is a fast developing region and expanding on its global significance. In 2005, American exports to East Asia were worth $169 billion (Kay, 2005: 4). The United States will be eager to maintain cordial relations with their allies in the area, of which the Philippines are close to top of the list. The two countries share a mutual-defence treaty, but the treaty does not elaborate on American assistance in contested jurisdictions (Scarborough Shoal, Spartly Islands, etc) (Kay, 2005: 4). The Republic of the Philippines is also an officially recognized major non-NATO ally of the United States (The Economist, April 28, 2012). This relationship will continue to develop and grow, notwithstanding any disagreement around the Philippines and its baselines.

The United States has implemented major shifts in its maritime assets in the region in the last number of years moving them closer to Indo-Pacific sea lanes, and the U.S. DOD officials have resolved to increase their positions in Southeast Asia into the future (Bradford, 2011: 183). A Cooperative Strategy for 21st Century Seapower, the 2007 released U.S. strategy contained two key statements, highlighted by Bradford, which outline the American's strategic reliance on the sea lanes of Indonesia and the Philippines:

> Credible combat power will be continuously postured in the Western Pacific and the Arabian Gulf/Indian Ocean to protect our vital interests, assure our friends and allies of our continuing commitment to regional security, and deter and dissuade potential adversaries and peer competitors.
>
> (…)
>
> We will not permit conditions under which our maritime forces would be impeded from freedom of maneuver and freedom of access, nor will we permit an adversary to disrupt the global supply chain by attempting to block vital sea-lines of communication and commerce. (2011: 185)

Additionally, as the Obama administration enters its second term, the American foreign policy focus is further transitioning. This shift, widely reported as a "Pivot to Asia" has been referred to by Deputy Defense Secretary Ashton B. Carter as a "new, strategic era" (via Youtube, US Department of State – East Asia & Pacific Media Hub). This phrase would appear to be the buzzword for rebranding America away from the War of Terror and towards the emerging issues in Southeast Asia. As explained by the Deputy Defense Secretary to a press roundtable in Tokyo on July 21, 2012, there are two key points which illustrate the American efforts to refocus energies towards Asia Pacific:

> All the capacity that has been tied up in Iraq and Afghanistan for the last ten years is capacity that we can focus now on Asia-Pacific theatre. That is tremendous capacity. Even though our Defense budget is not continuing to grow as a consequence of our desire to deal with the deficit issues in the United States. In that budget we are shifting the weight of innovation and investment from counter-insurgency type warfare to the kinds of capabilities which are most relevant to the Asia-Pacific theatre. For both those reasons we have abundant resources to make this rebalancing. (via Youtube, US Department of State – East Asia & Pacific Media Hub)

Hence, with such a regional refocusing underway, America seems attentive in efforts to keep Chinese regional hegemonic aspirations thwarted and beyond reach. In the face of these efforts, agreeing to politely disagree with the Philippines concerning its

maritime claims while reducing direct diplomatic pressure appears to be the current thrust of American foreign policy. This decision allows the U.S. to potentially benefit regionally in their efforts to improve relationships with allies and strengthen their deployed presence of U.S. military personnel.

Indeed, the Philippines and the United States recently reached an agreement to allow the U.S. military to once again have a foothold in the Philippine archipelago. The agreement was summarized by a Philippine government official who stated, “the U.S. will not return to the bases they gave up in 1991, but they will be here regularly and are welcome here" (The Diplomat, October 16, 2012). The probable explanation for this type of arrangement can be found in comments made in July 2012 by a Philippine Presidential spokesperson, rejecting the idea of the U.S. military re-establishing bases on Philippine soil due to such actions violating the Philippine Constitution (ABS-CBN News, July 18, 2012).

The direction of American foreign policy and attitude is further reinforced when taking the Philippine case into consideration. The United States are aware of the status and progress of the ASL submission issue within the Philippines. Accordingly, the breathing room afforded the Philippines through the removal of the FON operations is a minimal risk as the Philippines struggles with their own foreign policy as it relates to possible ASL submission.

Furthermore, the United States are safe in the knowledge that any ASL submission by the Philippines to the IMO will be fully exposed to the IMO process. As discussed, this process will significantly influence the Philippine submission, and the

process itself is influenced by intervener states, of which the United States is all but guaranteed to be one. With respect to the previously explained IMO process, it was noted that the United States views "continuing and participation in the IMO [as] one key to ensuring a regime that protects U.S. vital interests" (Galdorisi, 1997: 150).

The People's Republic of China

The Philippines must also carefully weigh where an ASL proposal would fall within their existing foreign policy priorities. There are significant disputes in Southeast Asia between the various ASEAN countries, as well as China, over contested islands, territorial waters, and the continental shelf. The islands themselves are not the main prize; rather it is the territorial waters and marine resources (fisheries, natural resources) which are the true bounty (Royle, 2001, p. 156). China has largely been the instigator (and antagonist) of these disputes. Dutton (2011: 55) is of the belief that "China is pursuing three main objectives in the South China Sea and Southeast Asia: regional integration, resource control, and enhanced security."

The official Chinese position was stated in May 2009 in official correspondence to the United Nations which read: "China has indisputable sovereignty over the islands in the South China Sea and the adjacent waters, and enjoys sovereign rights and jurisdiction over the relevant waters as well as the seabed and subsoil thereof" (Rahman and Tsamenyi, 2010: 328).

The Chinese policy around the contested South China Sea involves their recently well-publicized claim line (identified as a solid red line in Figure 16). This claim line was for the first time officially expressed and submitted to an international body on May

7, 2009[40] (Bensurto Jr., 2011: 19). However, Beijing has always been rather vague as to its intentions and the depth and specifics of this claim. Dutton (2011: 45) refers to it as "a studied policy of ambiguity about the line's meaning." Dutton goes further in identifying "four dominant schools of thought" found in China related to the policy for basing or explaining their claim: sovereign waters, historic waters, island claims, and security interests. Having numerous competing strategies being enforced by a wide range of government departments, military commands and state agencies further magnifies the lack of clarity (The Economist, April 28, 2012).

Therefore, these strategies are seemingly loosely packaged into Chinese actions which lend themselves to a type of creeping jurisdiction. Booth defines creeping jurisdiction as: "the extension of national or international rules and regulations, and rights and duties over and under the sea, in straits and coastal zones, on and under the seabed, and in the vast stretches of the high sea" (Booth, 1985: 38). While noting the Chinese claim line is a static line, it is the state actions within the claim zone where this creeping jurisdiction is occurring.[41] All four of the schools of thought identified by Dutton, are strengthened by the outward expansion of formalized jurisdiction by the Chinese state. Hence, it would appear that China has formally pushed out its boundaries and are now moving to solidify their holdings within this claim zone prior to international scrutiny.

[40] Bensurto Jr. refers to the Chinese claim line as the "9 dash line". He further distinguishes that in 1949 the Chinese nationalist government of the day issued a map containing a "9-dotted line". This document lends weight to the Historic Waters ideology identified by Dutton.

[41] Tony Walker refers to Chinese scholars terming the Chinese actions in relation to the Spratly Islands as "creeping assertiveness". See, "The Waters Beyond Mischief Reef". Financial Times. March 15, 1995. p. 23. These actions have most certainly continued since 1995, leading to a blending of creeping assertiveness aging into creeping jurisdiction in a sense.

South China Sea

The entire South China Sea region is filled with overlapping jurisdictional claims, contested islands and competing continental shelf submissions (Figure 17). This region, which includes the Scarborough Shoal, is claimed in its entirety by China, and smaller claims are staked by Vietnam, Malaysia, Brunei and the Philippines. The background, footing, and standing in international law of each claim are too immense to discuss here, and are not required to be distilled for this particular case. It is however, important to note for the purposes of this case, that the respective countries contest each other's overlapping claims.[42] Therefore, the dispute is a massive study in its own right, the most complex and pending overlapping jurisdictional claim at this point in time, and one which I only shall reference to a few specific incidents to illustrate its impact on Philippine foreign policy and a possible ASL submission.

Mischief Reef Incident

The Mischief Reef (Chinese: Meiji; Philippine: Panganiban) is an atoll, 130 miles from the island of Palawan, which is part of the Philippines Kalayaan Island Group, itself part of the bigger Spratly Islands within the 200 NM Philippines' EEZ (Philippines Daily Inquirer, May 2, 2012). The Philippines' claim to the Kalayaan Island Group involved fifty islands within the larger Spratly Islands (Storey, 1999). The Chinese military occupied Mischief Reef at some point in the monsoon season in 1994, a season in which the Philippine Navy were not engaged in patrolling the region (Philippines Daily Inquirer, May 2, 2012).

[42] Bensurto Jr. (2011) notes that the Chinese claim was officially protested by the Philippines, Indonesia, Vietnam and Malaysia.

The Chinese occupation of the reef first came to Philippine attention after a Philippine fishing vessel skipper alerted authorities that he and his crew were imprisoned for multiple days by Chinese military forces at Mischief Reef (Makinano, 1998: 20, as quoted in Storey, 1999). Storey (1999) explains what the Philippines discovered upon investigation:

> Reconnaissance aircraft later confirmed the existence of Chinese structures on the Reef -- four platforms on stilts, with three to four octagonal bunkers on each platform, equipped with satellite communication equipment. Eight Chinese naval vessels were also seen near the Reef.

Facilities that were described initially as four structures were explained by the Chinese government as "shelters for fishing vessels" (Financial Times, March 15, 1995). The Philippines protested this intrusion into their EEZ, and attempted to seek a resolution to the issue. The Chinese refused to budge, but the two countries signed a 'Code of Conduct', "aimed at preventing similar incidents occurring in the future, and increasing bilateral co-operation in the South China Sea" (Storey, 1999).

The situation remained static until October 1998, when the Philippines released "photographs of Chinese vessels unloading construction materials at the reef" (Storey, 1999). Over the course of the subsequent year, China constructed what one recent Pilipino news article called "a four-story military garrison" (Philippine Daily Inquirer, May 2, 2012). In September 2012, Philippine news sources reported that photographs from July 2012 showed significant facilities upgrades had occurred on Mischief Reef once more. The article included a photo mosaic (Figure 17) from different years showing the increasing structural footprint and identified "a windmill, solar panels, a concrete platform suitable for use as a helipad and a basketball court" as the most recent

upgrades (The Philippine Star, September 3, 2012). The Mischief Reef continues to be a lasting reminder to Manila of what must be perceived as the threatening aspirations of China in the South China Sea. Such a background is fortified by the pattern of Chinese state actions.

Reed Bank Incident

In March 2011, two Chinese patrol boats forced the survey vessel MV Veritas Voyager to withdraw from the Reed Bank area; an area within the Philippine EEZ which is also claimed by China (Storey, 2011: 7). The Philippine General in charge of the region is on record saying the ship was ordered by the Chinese vessels to stop its undertakings due to the area being under Chinese jurisdiction (Storey, 2011). The Republic of the Philippines lodged an official complaint with the Chinese embassy in Manila; responding to this complaint roughly two weeks later a Chinese Foreign Ministry spokesperson stated:

> China owns indisputable sovereignty over the [Spratly] Islands and their adjacent waters. Oil and gas exploration activities by any country or company in the waters under China's jurisdiction without permission of the Chinese government constitutes violation of China's sovereignty, rights and interests, and thus are illegal and invalid. (as quoted in Storey, 1991)

ASEAN Proposal

The Philippines have explored different means to address such regional foreign policy episodes. As mentioned, in an effort to limit and resolve Mischief Reef, they signed a pact with China. Another example was in September 2011 when the Philippines held a regional meeting in Manila with maritime and legal experts from the ASEAN States to study a Philippine proposal which, amongst other things, advocates for turning the contested islands into a "zone of peace, freedom, friendship and cooperation"

(Associated Press, as reported in The China Post, September 23, 2011). This proposal has been a non-starter, and all sides remain entrenched in their claims.

Scarborough Shoal Incident

At the time of writing (January 2013), China and the Philippines are locked into a territorial dispute over the Scarborough Shoal (Chinese: Huangyan Island; Philippines: Bajo de Masinloc). The Shoal is located within the Philippines 200 NM EEZ as set forth in international law. However, it is also within the extensive Chinese dotted line, a horseshoe shaped claim over the South China Sea by China. As in Figure 16, the Chinese claim is illustrated in Figure 18, as the red dotted line, however the Philippine EEZ is not shown.

This dispute escalated in April 2012, when Philippine fishermen discovered eight Chinese fishing vessels in these waters which are disputed and claimed by both countries. The incident which I will detail below was reported by Foreign Policy (April 12, 2012) as "the tensest moment militarily for the Philippines in years." Additionally, the Government of the Republic of the Philippines was quoted as stating to the Chinese ambassador: "[The Philippines was] prepared to secure its sovereignty [in the disputed areas]" (Foreign Policy, April 12, 2012).

Upon discovery of the Chinese fishermen and vessels, the Pilipino Navy responded to the area, rather swiftly around April 11-12, with a warship and attempted to detain the Chinese, under accusations of illegal entry and poaching. (Associated Press, April 15, 2012). These efforts were hindered and ultimately prevented by two Chinese patrol boats that had also responded. During the course of the standoff, the

Chinese fishermen withdrew during the period of April 14-15 (Associated Press). All the ships remained in a standoff as both sides were unwilling to withdraw.

On April 25, 2012, a Chinese foreign ministry spokesperson warned the Philippines, "internationalizing this issue will only complicate and magnify the situation. (…) We [China] do not wish to see the Philippines get other countries involved and get them to take sides over the issue" (Agence France-Presse, April 25, 2012). On April 26, 2012, it was reported that the Philippines were interested in bringing the matter before the International Tribunal for the Law of the Sea (ITLOS) to mediate the conflict.[43] A spokesman for the Chinese Embassy in Manila was quoted in response:

> [The Shoal] is China's inherent territory on which we have sufficient legal basis. (…) [Manila should] fully respect China' sovereignty. (…) [The Philippine government must] commit to the consensus we reached on settling the incident through friendly diplomatic consultations, and not to complicate or aggravate this incident so that peace and stability in that area can be reached. (Philippine Daily Inquirer, April 26, 2012)

In retort to the Chinese comments, a Philippine spokesperson stated concerning the ITLOS process, "we are prepared to do it alone" (Philippine Daily Inquirer).

Al Jazeera: 101 East – *'Standoff at Scarborough Shoal'*

The Al Jazeera current affairs news show 101 East aired an episode entitled 'Standoff at Scarborough Shoal' on August 3, 2012. The show reported that the Chinese fishermen were engaged in poaching sharks and collecting rare corals and giant clams. It

[43] In January 2013 the Philippines delivered a Note Verbale to the Chinese indicating that they have requested the tribunal, under Article 287, to rule on the validity of the Chinese claim line within the South China Sea. The Chinese reiterated their position that the ASEAN countries should solve their disputes and not internationalize the issues (even though China is not a member state of ASEAN).

further revealed that, after a two month standoff, the Philippine government reported that both sides agreed to withdraw their vessels and impose a fishing ban.

The Al Jazeera presenter chartered a Philippine vessel to take her out to the Shoal to investigate the situation. As the vessel approached the Scarborough Shoal, they found four Chinese patrol vessels, one of which came upon them and ordered them away. When queried by the Al Jazeera chartered vessel why they were being asked to leave, the reason radioed back by the Chinese vessel was "Your vessel has entered the sea area under the jurisdiction of the People's Republic of China and leave the area immediately." The Chinese patrol vessels escorted the Al Jazeera charted Philippine vessel a full ten nautical miles away, before turning back. It should be noted that the program (101 East) issued an interview request to the Chinese embassy in Manila which was declined.

Finishing Thoughts

Rahman and Tsamenyi (2010: 329) conclude in their analysis that China is coupling longstanding economic and political pressures together with ratcheted up militarized pressure against other claimant states and regional interveners such as the United States. The authors view these actions as, "a concerted effort to bolster its [China's] strategic position in the South China Sea, returning to a trend that had been evident since the early 1970s, but which is now enabled by far greater resources and military capabilities than before" (Rahman and Tsamenyi). The Mischief Reef, Reed Bank, and the more recent Scarborough Shoal incidents are all blatant examples of what,

from the Philippine perspective, is a very difficult and challenging relationship between regional neighbours.

West Philippine Sea Naming

Philippine President Benigno Aquino III issued Administrative Order 29, signed September 5, 2012, retitling as the West Philippine Sea, "the Luzon Sea and the waters around, within and adjacent to the Kalayaan Island Group, which form parts of Spratlys, and Bajo De Masinloc, which is also known as Scarborough Shoal." This action was denounced by both China and Taiwan. A spokesperson for President Aquino III is quoted in a newspaper article stating: "We've been calling the EEZ as West Philippine Sea so that should not be an area where should be friction among nations—ASEAN. So we don't see it as a cause for conflict among ASEAN or our other neighbors" (Sun Star, September 12, 2012).

Hence, with such volatility in the region, the Philippines must determine whether they wish to appear to weaken their international relations by ceding their claims on internal waters in order to submit an ASL proposal.

International Public Opinion & Civil Society Actors

This factor was explicitly identified by Tsamenyi and Mfodwo (2001: 37) who write:

> This [factor] clearly has a long range/long-term character and influences both States and international organisations in unpredictable ways. The principal conduit for these diffuse pressures is the internationally active non-governmental organizations (NGOs), with some degree of support from sympathetic governments, international organisations and the mass media.
>
> Whilst most pressure on navigational rules comes from NGOs with an explicit maritime agenda (for eg. Greenpeace and WWF) the influence of NGOs active in other arenas (eg human rights NGOs, animal welfare NGOs, trade and

> development NGOs) should not be overlooked as these groups also contribute to the overall process of norm change in international law generally.
>
> An excellent example of this type of pressure is the heightened and generalised public concern in all countries with regard to the ecological health of the oceans. In legal and political terms this is evidenced in the growing calls for the application of the precautionary principle to all uses of the sea.

It is clear that in the years since the publication of Tsamenyi and Mfodwo this factor remains very much in evidence and at play. There is great potential for international public opinion and civil-society actors to influence any Philippine submission. Meanwhile the situation here remains tense and can degenerate into a regional military confrontation.

3.7: CONCLUSION

This chapter has identified and introduced the facts of the case of the Republic of the Philippines as it relates to UNCLOS. Philippine domestic history around the archipelagic concept, with respect to national legislation and actions of the executive branch was presented in a timeline and discussed. Additionally, this chapter highlighted a 1997 text which presented a case for archipelagic sea lane (ASL) designation in the Philippines including two technically thought-out ASLs. This is followed by the most important part of the case: the very recent legislative efforts of Philippine lawmakers to domestically designate three ASLs. These actions are examined with a specific focus to identify possible factors influencing the Republic of the Philippines in this process.

Chapter Four: Findings and Analysis

The law of the sea is a dynamic phenomenon. While the words in UNCLOS may remain static, their interpretation will change over time

(Sam Bateman, 2007: 55)

4.1: INTRODUCTION

Bateman's quote above highlights the significant challenges that still face UNCLOS to this day. This 'dynamic phenomenon' is dependent on one's interpretation, which as Bateman forecasts does not remain static over the long run. Add in domestic and foreign agendas around politics and policy, and it becomes easier to see how murky and gray the implementation of UNCLOS has been and shall continue to be.

4.2: SCENARIOS

The longstanding assumption was that any submission by the Philippines would stand as complete due to the density of the archipelago, which severely limits the number of possible ASLs; but the possibility of a partial designation and its implications were not anticipated (Batongbacal, 2004: 60). Therefore, the findings and analysis will serve to illustrate which scenario is most likely to occur.

There are three envisioned scenarios pertaining to the matter of Philippine ASL submission and adoption by the IMO. The first scenario to review would be a decision by the Philippines to not go forward with an ASL submission, thus maintaining the status quo. In the case of a non-submission, as per the UNCLOS Article 53 (12),

freedom of navigation on existing routes would be retained by all states: "If an archipelagic state does not designate sea lanes or air routes, the right of archipelagic sea lanes passage may be exercised through the routes normally used for international navigation." Kaye (2008: 16) notes a non-submission by archipelagic states "is also the most advantageous position for maritime states wanting freedom of navigation."

The second probable scenario is a Philippine submission resulting in a partial regime designation by the IMO. Batongbacal (2004: 55) offers the following analysis:

> The concept of partial designation may be critically questioned. The idea that an ASL designation that does not cover all routes through the archipelago is deemed a partial designation, and does not prevent the exercise of the ASLP in other undesignated routes, renders the designation practically ineffective. **No benefit is gained by the archipelagic state in making a partial proposal and designation, since all routes not designated are still subject to ASLP anyway. A partial designation is like no designation at all** [emphasis added].

The third scenario would be a submission which was fully adopted by the IMO, thus giving the Philippines the sole distinction of having a full ASL regime. Beckman (2007: 129) notes that an advantage gained through ASL designation is the ability to have clearly defined routes and to be better able to monitor traffic within these lanes for vessel-source pollution.

4.3: THE FAILURE OF ACHIEVING THE ARCHIPELAGIC CONCEPT

In weighing all the factors, one vital fact must be strongly considered. There is broad agreement amongst scholars that the Philippines were not successful in gaining support and recognition of their territorial boundaries – the very core piece of their internal

waters and archipelagic concept (Bautista, 2010: 135). The results of this failure spelled out by Batongbacal are clear:

> **The Philippines ultimately has no choice but to implement the Convention, for non-compliance places it in a far less favourable position on account of the non-recognition by foreign nations of any action that is inconsistent with the Convention's rules** [emphasis added] (Batongbacal, 2001, as quoted in Bautista, 2010: 136).

Bautista (2011: 48) continues to support Batongbacal's views, drawing the conclusion that, "The idea of sovereignty carries a very strong emotional appeal to the nationalistic sentiments of Filipinos, or to the people of every nation for that matter. However, obstinately holding on to an idea which does not have a secure basis in international law is more embarrassing to the Philippine Government." This point is further reinforced by Batongbacal in a more recent article. He states, "The International Treaty Limits are not universally recognized as comprising the full extent of the Philippine national territory. As far as the world is concerned, our territorial waters end at 12 nautical miles from each island's shores" (2008: 3).

4.4: FINDINGS

Hence, the Philippines find themselves currently in a very difficult position. In order to better appreciate this state of affairs, a review of the findings related to the six posed research questions is proposed below.

Research Question #1
Will the Philippines enact ASLs?

Bensurto Jr. notes that RA 9522 is the first step of a three step legislative process: the other two steps being maritime zone legislation and ASL legislation (2012, Slide 7).

Additionally, this thesis, has already discussed the fact that the Philippine President's priorities as acknowledged through his LEDAC committee include proposed legislation for both maritime zones and ASLs. Indeed, the bills for these remaining steps highlighted by Bensurto Jr., the legislating of maritime zones and ASLs, prioritized by the President, are currently (February 2013) before the Senate Foreign Relations Committee as highlighted in Chapter Two.[44]

The evidence found in the research data seems to suggest that the Republic of the Philippines will move forward to enact ASLs. The twin bills from both Houses, endorsed and amongst the President's priorities show that the Philippine Government is indeed on course. However, it is impossible to say with absolute certainty that these bills will pass, and that the designation of ASLs will overcome all obstacles to become Philippine law.

While enacting domestically legislated ASLs can be considered a step forward, under the terms of UNCLOS, any ASLs must be sent on to the 'competent international organization' that being the IMO for adoption. The research data suggests that the Philippines do intend to forward their domestically approved ASLs to the IMO.

Research Question #2
How specifically has the Indonesian experience influenced the Philippines in its own ASL process?

This case has set out to investigate and explain that the Republic of the Philippines and their actions and decisions surrounding whether to submit archipelagic sea lanes to the

[44] The April 27, 2012 Senate Foreign Relations Committee meeting agenda contained the Scarborough Shoal incident (Agenda Item No. 1), Maritime Zone Bills – SBN 2723, SBN 2737, HBN 4185 (Agenda Item No. 2), and ASL Bills – SBN 2738, HBN 4153 (Agenda Item No. 3)

International Maritime Organization has been influenced by the Indonesian experience of archipelagic sea lane submission to the International Maritime Organization.

During the course of investigation there has been no qualitative research data uncovered which directly and explicitly states that the Republic of the Philippines has been influenced by the Indonesian case. However, such explicit data would need to be sourced directly from the Philippine Government in order to lend it legitimacy and validity. Moreover, such documents, if they were to exist, would do so at a very senior and highly confidential level.

Hence, given the unlikeliness of unearthing such research data, this case was designed to use a wide range of data sources in lieu of such documentation. While this thesis is unable to offer explicit evidence of Indonesian influence, **the data uncovered does offer some indication of probable direct and indirect influence**. Having thus framed this analysis as direct and indirect Indonesian experience influence, how is one to explain the specifics of these influences?

Patterns of Shared Experiences

When reviewing the experience of Indonesia and the Philippines, there are some major patterns which can be extrapolated. It is clear that the concession of maritime sovereignty for defined archipelagic sea lanes has been a divisive issue for both states. While not debating the reality and viability of the maritime sovereignty these states claim, regardless of its legality, their sovereignty has been deeply enshrined into the individual and collective psyche of the peoples of Indonesia and the Philippines.

Both states fought long and hard in their efforts for international recognition for their archipelagic concept. This concept is closely tied, in both cases, to the nationalistic narrative of independence. Each of these states has a comparatively short history of independence, one which stretches just past the start of the UNCLOS process. Hence, the memories and feelings around the gains of independence are still quite fresh.

Once independent, Indonesia and the Philippines were proactively working through their respective Parliaments to enshrine their archipelagic concept and maritime sovereignty in national legislation. During the course of the UNCLOS conferences Indonesia and the Philippines were the two archipelagic states who worked collaboratively and tirelessly to advance the idea of the archipelagic concept. They were joined by other archipelagic states (Fiji, Mauritius) for UNCLOS III to passionately represent, advocate and criticize in the name of the archipelagic concept; however, the archipelagic torch was clearly carried for many years by Indonesia and the Philippines alone.

Indonesia weighed the perceived benefits, while not necessarily anticipating a 'partial regime' and decided to go ahead with an ASL submission. The Philippines is currently found in a very interesting position which appears to be leaning towards a formal submission to the IMO. I must surmise that this pattern of shared experience has influenced this case.

Republic of the Philippines comment on the IMO Indonesian Process

Secondly, the Philippines did interject during the Indonesian process, arguing it represented a one-off and not a precedent, and refused to be bound by that process or its

outcome. The Philippines also wish to reserve the right to suggest changes to the GPASLs in the future. To reserve the ability to amend the GPASLs seems to be a fallback position should the Philippines be bound to the IMO process followed with the Indonesian submission. Such an action would appear to weaken the Philippines' objection in the first place. Additionally, with respect to the fight to not follow the IMO process, it would seem very unlikely that the Philippines will win such a battle in the court of international opinion and the halls of the United Nations. Regardless, these interjections can be viewed as a direct influence on the Philippine case.

IMO Influence

It is clear from the research data that the mid-ocean archipelagic states did not foresee the rise of a partial regime. The literature further reveals the role which this regime plays in altering the UNCLOS landscape and tilting it in favour of the maritime powers. This is owing to the fact that as interveners, interested states are able to influence the end product of a formal ASL submission by a mid-ocean archipelagic state. Such influence I recognize as a by-product of the Indonesian case, as Indonesia was the first mid-ocean archipelagic state to formally submit proposed archipelagic sea lanes to the IMO.

As previously noted in this thesis, American foreign policy in Southeast Asia, while being driven by apparent Chinese hegemonic aspirations, is leading to a closer military relationship with American regional allies, specifically the Philippines. The easing of hard power diplomacy, such as the FON Program, is transforming into soft power, made easier by the Philippine desire for semi re-establishment of American military assistance and security guarantees.

Applying the IMO influence to the Philippine case, this transition illustrates shifting foreign policy concerns of both the United States and the Philippines respectively, with the added failsafe, or incentive, for America of the IMO influence variable for any Philippine maritime policy pursuits (designating ASLs). That being said, it appears that the evidence supports that the Republic of the Philippines are confident in the belief that they can subvert the IMO influence variable by means of setting their national house in order and domestically designating ASLs before bringing these forward as a complete package. This belief is supported through the Philippine opinion, dating back to the Indonesian case, that the IMO has no role or authority to alter submissions. This would seem to be the second pillar of which the Philippines hold to the belief of avoiding any influence from the Indonesian experience.

It should be noted that this was the same opinion held by Indonesia during its own submission. Indonesia argued this position after submitting its domestically approved proposal. The end results of the Indonesian case which were quite unfavourable to Indonesia were of course the unforeseen 'partial regime' being enacted.

As a signatory state to UNCLOS, the Philippines are obligated to conform, this conversion occurring in a stand-alone forum of the IMO, as governed by international interpretations of vague references in UNCLOS. It is clear that the Philippines are still viewed with great importance by the IMO. The current Secretary-General of the IMO took office on January 1, 2012 and his first official mission to a Member State was to the Philippines in early February (IMO Press Release, February 9, 2012). While the official IMO press release concerning the visit did not directly mention ASL issues, the release affirmed support "…in all facets of the country's maritime development" (ibid).

The path forward chosen by the Philippines appears to be an ASL submission to the IMO for adoption. But, the simple example of the birth of the GPASL and the 'partial regime' should serve to demonstrate the unpredictability from a mid-ocean archipelagic state's view of this entire exercise.

Consequently, I feel the Philippines have long been influenced by the Indonesian experience, stretching as far back as their stated objections to Indonesian process and precedent. This direct influence stems from the interjected objection, influencing a belief that this on-the-record objection will merit them a clean slate. Adamantly convinced they shall be a fresh, stand-alone case for IMO consideration, there is further influence, in the form of the rather confident Philippine position, that the domestically legislated ASLs will be adopted by the IMO without amendment. Be this as it may, I remain rather skeptical of the Philippine ability to avoid the IMO influence variable in the course of formal ASL designation. Thus, I think the Indonesian experience shall indirectly influence the Philippine case in the form of future IMO influence to any ASL submission. For these stated reasons, it is my belief that the Indonesian experience has both directly and indirectly influenced the Philippines case.

Research Question #3
What additional factors are influencing the Philippines?

These additional factors have been extrapolated from the research data, and represent a substantial composition of converging evidence. This interconnecting trait can be attributed as the 'archipelagic effect' of maritime policy in the Philippines.

Full UNCLOS Compliance

As this thesis has identified, the Philippines have a few interconnected issues relating to UNCLOS, including the designation of ASLs. Designating ASLs is but one component of the larger matter of the Philippines becoming compliant to UNCLOS. Furthermore, while ASL designation is non-compulsory, the other issues such as baselines (addressed in RA 9522) are in fact mandatory. The legality of the Republic of Philippines' position is questioned by Bautista when he points out:

> once a state expresses its consent to be bound by an international undertaking, that state must comply with its obligations arising from that undertaking in good faith. This is embodied in the international legal principle of pacta sunt servanda, codified in the Vienna Convention on the Law of Treaties, which in Article 26 states: '[e]very treaty in force is binding upon the parties to it and must be performed by them in good faith.' Thus, the Philippine Government is obliged to observe this rule vis-à-vis its commitments under the LOSC [UNCLOS] (2011: 46-47).

The Republic of the Philippines issued a declaration on October 26, 1988 which indicated that it will abide by UNCLOS and that the Republic is indeed intending to uniform its domestic legislation with UNCLOS, and furthermore, will be legislating ASL passage in the future (Lotilla, 1995, as quoted in Bautista, 2011: 45).

Baselines/Territorial Boundaries

Encomienda makes reference in 2009, to efforts to pass updated and compliant baseline legislation (which ultimately passed and became RA 9522) as "clear proof that we want and we are in the process of complying with UNCLOS" (2009: 460). Bensurto Jr. corroborates this in 2012, noting in his presentation that RA 9522 is "significant" and illustrates a move towards "complete adherence to UNCLOS" (Bensurto Jr., 2012: Slide

7). Given the two men's positions within the Republic of the Philippines[45] the validity and credibility of this data is strong. The continuity of their message and positions, which seems to parallel the current presidential term of Aquino III, is also important. In examining the actions and statements of key Philippine officials and legislators it would appear that the Republic of the Philippines intends to become fully compliant with UNCLOS in the near future.

Constitution definition including Internal Waters

Having assurances that the Philippines intends to fully comply with UNCLOS, the last major domestic legal hurdle remains that of the Constitution. The Constitution opens with an unambiguous statement that the waters of the Philippines are internal waters. As shown in a previous chapter, this branding is very much inconsistent with UNCLOS.

Given that maritime zone legislation is currently before the Senate Foreign Relations Committee, I must surmise that this legislation will adequately comply with UNCLOS in its designation of the maritime zones of the Philippines. While my research has failed to identify the exact method as to how the Republic of the Philippines will reach a solution to their Constitution, such tinkering is an inflammatory exercise at the best of times. Thus, I strongly doubt that the Philippines would choose to rekindle the divided domestic opinion through a full opening and amending of the national Constitution. It will be interesting to see how the Philippine Administration brings the Constitution into UNCLOS compliance.

[45] Encomienda is identified as the then: Secretary-General, Maritime and Ocean Affairs Center, Department of Foreign Affairs, Republic of the Philippines (2009, Page 393). Bensurto Jr. is identified as the then: Secretary-General, Commission on Maritime and Ocean Affairs Secretariat (2012, Slide 1).

Environmental Concerns

This factor stands both on its own merit, and can also be connected to the forthcoming factors of "Routing Concerns" and "Time & Expense for ASL Proposal." Bensurto Jr., highlights the growing concern of marine environment protection as the key trigger for government action to designate ASLs through legislation:

> If the Philippines does not designate, MPAs would be vulnerable. Thus, it is better for the Philippines designate ASL in order to protect MPAs by limiting the area covered by ASL. Indeed, this was one of the rationale behind the designation of ASL so as to avoid as many MPAs and Fishery areas as possible (2012, Slide 50).

He further reinforces the importance of environmental protection, citing it also as the reason why the Philippines has chosen to act immediately by legislating ASLs domestically, rather than by first going through the IMO process:

> It is precisely because of the urgency of providing protection to the country's marine biodiversity and corals that the procedure under Article 53.9 should not be looked at as something that prevents the archipelagic state from exercising its substantive and inherent right to protect its marine resources for its people. This is state-preservation (2012, Slide 55).

Therefore, "Environmental Concerns" is having a dual influence on the Philippines. Firstly, it would seem to be the main cause for government action on this issue; and secondly, it also is the stated primary catalyst for the urgency of government action. It is evident that the Philippines, like Indonesia, will desire to keep the number of ASLs through its archipelago to an absolute minimum. Beckman (2007: 127) supports this position arguing that it is likely to be defended by the Philippines under the auspices of environmental considerations. As such, the factor of 'Environmental Concern' appears to be significantly influencing the Republic of the Philippines and the ASL issue.

Domestic Public Opinion

The Philippines has found the issues of ASL designation and the larger context of UNCLOS compliance to be quite contentious, dating back to the negotiations. Indeed, the government undertook the unprecedented step of a stated objection while signing UNCLOS, indicating that the Philippine position of sovereignty over its waters was unchanged. Such a step, identified to ease domestic opposition, starkly highlights how difficult consensus has been to locate and achieve.

Mr. Anders Sjaastad, Senior Advisor at the Norwegian Institute of International Affairs (NUPI) offered this observation in relation to South-eastern Asian States: "…for some of the littoral states that can still remember their colonial past, the principle of sovereignty is sacrosanct and any arrangement or action, which could be seen to undermine it, is taboo" (2005: 7). It is has been conceded by Philippine state officials that divided opinion exists; indeed it would be next to impossible not to recognize this factor. "Divided Public Opinion" has influenced this case for well over four decades. Nonetheless, given the recent actions of the Philippines, it appears that while the state acknowledges divided public opinion, it has made the decision to push forward regardless. Taking that qualifier into account, "Domestic Public Opinion" has the future possibility of influencing the Philippine case, as it has done previously.

Time & Expense for ASL Proposal

On the surface, it is difficult to ascertain the preparatory work and cost incurred in working up the ASLs contained in the currently debated legislation. However, the embodiment of this factor is the adage "do it once, and do it right." It is clear through the data that the Republic of the Philippines has thought long and hard about ASL

designation and submission. While internal government information concerning expenditures and human resource allocation are not contained in my data, it is telling that the current administration has made the larger matter of UNCLOS compliance and the concurrent issue of ASL designation a priority. Given this distinction, I must accept that the President and the government have invested required levels of resources into developing these lanes. Furthermore, dating back to previous administrations, I would propose that since the ratification of UNCLOS in 1994, continuing through the Indonesian experience and also the 1997 proposal, that preparatory work would have been undertaken if not externally, then most certainly internally, to mock up the various scenarios facing the Philippines with ASLs.

When I consider the factor of "Time & Expense for ASL Proposal," I view it as only being possible to influencing the case in a cautious, delaying fashion. However, since Philippine officials have indicated the challenges faced by such a divisive public opinion, I would argue that the short-term political implications have played a larger role in the delayed fate of the Philippine case, as opposed to various administrations taking the 'Time & Expense for ASL Proposal' into consideration.

Since ASLs have been identified, included in Presidential priorities, and are before the Congress currently, I am led to suppose that all due diligence has been completed. On this probable assumption, I must also believe that all necessary preparatory work, technical activities and engagement exercises would be included in such due diligence. Therefore, while the data is unable to determine conclusively, it would seem that there was significant influence surrounding "Time & Expense for ASL Proposal" prior to the 2011 tabled legislation in the Philippine case.

Routing Concerns

This identified factor ties very closely into the preceding factors "Environmental Concerns," "Time & Expense for ASL Proposal" and as well the succeeding factor "Inter-Island Transport/Domestic Economy." The research data reveals two sets of ASLs publically proposed in the Philippines. While one set (1997ASL Proposal) was put forth in text by seemingly informed experts, the second set (2011) is found in the currently pending legislation. Therefore, in order to analyse any influence around routing concerns, the most logical approach would seem to be to compare the two sets of ASLs.

For starters, it is worth pointing out that, of the three 2011 routes, only one appears identical to a proposed 1997 route (ASL #2). Next, ASL #3 the North-South route, contains one leg that appears identical as proposed in the second 1997 route, while the routing south of Panay Island is different in the two proposed routes (1997 & 2011). Thus, this leads me to conclude that the routing change is due to an output of preparatory work. Additionally, ASL #1, the East-West route in the Luzon Strait, only appears in this research within the outstanding proposed legislation. Examined closer, there are two smaller east-west straits running between various Philippine islands in the larger Luzon Strait. Hence, there has most certainly been "Routing Concerns" taken into consideration to choose one over the other. Clearly there would seem to be a great deal of work which has gone into taking numerous concerns, opinions, and considerations into account while developing the now proposed ASLs. Thus, the combination of these developments around routing illustrates that factoring 'Routing Concerns' has influenced the Philippine ASL issue.

Philippine National Marine Policy (1994)

As discussed in Chapter Three, one of the core criteria found within the Philippine NMP is: "Implementation of the LOSC [Law of the Sea Convention] must be consistent with national interests as prescribed in the NMP." Therefore, as an ASL submission is optional, the NMP is primarily concerned with any Philippine compliance to UNCLOS being carried out in the best interest of the State. It is evident that, over the course of development, the authors of the NMP would have consulted extensively with stakeholders and experts to produce sound, tight policy. Also taking note that this policy decree occurred the same year as UNCLOS came into force (1994), this policy was in all probability laid down to guide any future courses of action chosen by the Republic of the Philippines.

Moreover, the overwhelming viewpoint of the vast majority of the research data indicates that becoming UNCLOS compliant is the best course for the Philippines. By embracing UNCLOS, the Philippines passed RA 9522 which provides recognized baselines which demarcate a larger national territory than under the Treaty of Paris (1898) limits. As Justice Carpio's decision in G.R. No. 187167 (Prof. Merlin Magallona, et al. v. Eduardo Ermita, et. al.) found: "RA 9522 is therefore a most vital step on the part of the Philippines in safeguarding its maritime zones, consistent with the Constitution and our national interest." As admitted by officials, the pending legislative pieces that enact maritime zones and designate ASLs are the next steps in UNCLOS compliance that seek to meet the terms of the NMP and by extension the national interest of the Republic of the Philippines. In the clear efforts to champion and abide by the NMP and the action of becoming UNCLOS compliant and designating ASLs,

reinforced by the unanimous ruling of the Supreme Court of the Philippines, I must theorize that the 'Existing National Marine Policy' has influenced the Philippine case.

Inter-Island Transport/Domestic Economy

This factor, as already stated, is closely tied to the factors of "Routing Concerns" and by the aforementioned linkage identified through the "Time & Expense of ASL Proposal" factor. The factor of "Inter-Island Transport/Domestic Economy" is heightened by the almost total reliance of the Philippines on marine-based domestic movement of goods. Given the large number of fishers operating within Philippine waters, as well as the importance of prescribed lanes, the integrated, safe management of marine users becomes obvious.

This connection to "Routing Concerns" owes in no small part to the illustrated variance between the 1997 and 2011 proposed ASLs. These changes would have come about for a variety of reasons, which can be interrelated with fair likelihood to "Environmental Concerns" and "Inter-Island Transport/Domestic Economy." This explanation attests that "Inter-Island Transport/Domestic Economy" has influenced the Philippine case.

Regulatory & Enforcement Capacity

The Philippines is required upon designation of ASLs to properly protect and regulate these lanes as well as to have the ability to enforce these measures. As noted when discussing international law, the burden of enforcement falls to the affected state, and there is no obligation for any state to take action. Also UNCLOS, Part IV places a further onus on the archipelagic states if designating ASLs, to ensure that they are safe

by regulating traffic and invoking traffic separation schemes if necessary. The evidence shows that "Regulatory & Enforcement Capacity" has definitely influence this case, and will continue to.

Political Geography

To begin, this case has identified "Political Geography" in the context of international level, external influence. However, prior to analysing this factor in the external setting, scrutiny must be paid to its relationship to other already reviewed influences. The factor of "Political Geography" is intricately woven into many of the previously identified and analysed domestic influences. In fact, this factor should be recognized as both a state level and international level influence. Arguments can be made that it domestically links directly to "Routing Concerns." Given the strategic location, from a domestic perspective, the routing of possible routes must make sense at the local, national and international level. Additionally, "Political Geography" very much factors into internal Philippine foreign policy decisions.

On the strictly international level, the "Political Geography" of the Philippines is a huge consideration for regional foreign policy in Southeast Asia as much as for any other state. On this basis, "Political Geography" is interconnected to all the regional foreign policy agendas of other states termed as external influences in this case. Hence, "Political Geography" is studying the intersection of geographical and political considerations; the two substantive issues of the Philippines case. This leads me to identify "Political Geography" as the main conjoining factor, significantly influencing this case.

Physical Geography

Within the Philippine case, physical geography can be observed to have previously been included in the factors of "Routing Concerns" and to what I would argue a slightly smaller extent of "Environmental Concerns." No two archipelagos are alike. Granted, UNCLOS offers loose parameters in order to group them into a distinctive category. However, as pointed out many times in the data, the "Physical Geography" of the Philippines presents a unique set of challenges relating to ASLs, specifically as I noted in Chapter Three, pertaining to the condensed concentration of the islands. The impact of this is through the spatial inability to site ASLs in many of the straits in the Philippines. This, therefore, places a quantifiable limit on the viable number of ASLs that can be designated. So, in this manner, "Physical Geography" has already and will continue to influence this case.

International System Influences in Southeast Asia

Chapter Three notes there are a number of state actors operating in the Southeast Asian region exerting possible influences on this case. The ones of main interest and thus highlighted in the case include China, Australia and the United States. There is also a major regional intergovernmental organization (ASEAN) in which all states including the Philippines (but not China) hold membership.

Association of Southeast Asian Nations (ASEAN)

Prior to reviewing the state actors, it is prudent to first look more closely at ASEAN. This organization is the primary platform for regional diplomacy, and acts as a counterbalance to China. Broadly, it is where discussions around the disputed islands of the South China Sea occur amongst the neighbour claimant states. In the context of this

case, it was mentioned that ASEAN was the venue for the attempted resolution of the Mischief Reef incident, and the Philippine shared sea/zone of cooperation proposal. However, as both these examples illustrate, ASEAN is a venue for ideas and discussion and is limited by that mandate. For this case, ASEAN does not have a large role to play concerning ASLs, but is involved through the regional tensions which themselves are influencing this case. Since ASEAN is unable to resolve these tensions owing to the vested national interests of all the state parties, ASEAN has not had an influence on this case.

Theoretically, ASEAN could influence this case, in the event that the issue of Philippine ASLs becomes an overriding regional matter. Yet, this is a doubtful course of action, since Philippine compliance to UNCLOS would only help to strengthen their case to the international community for the Scarborough Shoal and the KIG. Further, ASEAN member states are hesitate to engage China on behalf of any other state, as each ASEAN member has its own priorities, claims and foreign policy agenda. Therefore, it is not likely any other ASEAN states will be pressuring the Philippines around this issue, and ASEAN should continue to be a non-factor in this case.

Australia

While Australia is predominately dependent on the Southeast Asian marine shipping routes, it is more intertwined to Indonesian than the Philippine routes owing to physical geography. In addition, in the last number of months we have seen the Obama administration shift their foreign policy focus towards Asia-Pacific, and the Gillard government has warmed to a closer security relationship with America as a result. The research suggests that Australia to date has not influenced the Philippine case.

Furthermore, the projection of American regional hegemony means that Australia stands little chance of influencing the Philippine case into the future.

The United States of America

The United States have had a long and direct relationship with the Philippines. This relationship has evolved from colonial power to hegemonic security protectorate to regional ally. As the main strategic ally in the region, the Philippines was previously home to major US military bases for decades, and after a divorce of more than two decades, recently welcomed back a semi-permanent American military presence. In the context of this case, the U.S. have actively opposed the archipelagic concept during the UNCLOS process, the Philippine baselines prior to RA 9522 and the Philippine claim of internal waters within their baselines. This opposition took the form of diplomatic protest and also the FON program.

These recent developments, discussed further in Chapter Three, indicate that the Americans are once again going to play a vital, on location role in Philippine regional security in Southeast Asia. This is one major aspect of the American foreign policy shift towards the Asia-Pacific. Also given the strong allied association between the two states, it would appear that the U.S. is poised to play a leading role in Philippine foreign policy in the future. The United States has and will continue to influence this case.

The People's Republic of China

China has been the most prolific source of episodic influence around this case in the period following UNCLOS entering into force. As the extensive section in the preceding chapter outlined, there have been a number of incidents between the

Philippines and China in the contested South China Sea. These incidents have a direct influence on this case because of their temporal and spatial dimensions. The continual pressure which Beijing has ratcheted and applied to Manila has flared up the already divided issue of jurisdiction and sovereignty over Philippine waters. The Mischief Reef, Reed Bank, and Scarborough Shoal incidents have all occurred within the Philippine maritime jurisdiction of its UNCLOS mandated Economic Exclusive Zone (EEZ).

The Chinese seem intent on strengthening their hold over the South China Sea. As noted, there appear to be multiple paths proposed with the many branches and organs of the state on how to proceed. While the ambiguity of official policy remains as cloudy as international law itself, state actions would suggest a "possession is nine tenths of the law" belief, in essence a case of effective occupation. It is a possibility that these factors will produce a scenario of a Chinese effort, similar to the archipelagic states with the archipelagic concept, to secure international support for their South China Sea holdings through recognition into customary international law.

In addition, the reintroduction of an American military presence (albeit semi-permanent)in the Philippines will evoke a Chinese response. These two powerful states and their actions will ultimately play a large role in the future of this case. This data as a result leads me to conclude that Chinese influence has been long-standing and shall continue in this case.

International Public Opinion & Civil Society Actors

This external influence ties into the factors of 'IMO Influence' and 'Environmental Concerns'. As related to 'IMO Influence' during the UNCLOS process, the archipelagic states failed in their efforts to sway international public opinion for recognition and acceptance of the archipelagic concept. A second feature connecting to 'IMO influence' is the stated belief of the Republic of the Philippines that the most crucial test, for what they hope are their soon-to-be domestically legislated ASLs, is to command respect from the international community.

Secondly, there is the direct association with 'Environmental Concerns' Tsamenyi and Mfodwo (2001) cite the ecological well-being of the oceans as their example when identifying this factor. Thus, the most likely scenario for influence would seem to involve environmental considerations. The plight of the marine environment has become engrained in the lexicon of citizens, policy makers and pundits throughout the international community. This suggestion is greatly validated by Encomienda's PSSA proposal and Bensurto Jr.'s indication that environmental protection is the main reasoning behind ASL designation. Taken all together, these strands indicate that 'International Public Opinion & Civil Society Actors' have significantly impacted the Philippines case and will continue to do so.

The Influence of International Law

After careful consideration, there is one significant influence which this case has yet to formally account for and analyse. This is the influence of "International Law," an influence that outshines all others previously identified and analysed.

The efforts of the international community to address the legality of many maritime matters in the post-World War II period, was to be the first significant effort at a universal doctrine for the maritime area of international law. Wight (1978: 108) defines the purpose of international law as "to define the rights and duties of one state, acting on behalf of its nationals, towards other states." Therefore, it can be argued that international law (UNCLOS) represents the starting point for interpretation, foreign policy direction and diplomacy.

It has been noted that international law is quite decentralized and "overwhelmingly the result of objective social forces" (Morgenthau, 1993: 256). Morgenthau also advises that international law "owes its existence and operation to two factors, both decentralized in character: identical or complementary interests of individual states and the distribution of power among them." The dispersing traits found in the international law carry down into the three components of legal systems: "legislation, adjudication, and enforcement" (Morgenthau). Morgenthau keys in on three main areas concerning the legislative component of international law: the usage of vague wording, the openness in interpretation (magnified by this vagueness), and the binding force (or not) applied to signatory states. Looking specifically at the issue of vagueness, Morgenthau writes:

> For such documents, in order to obtain the approval of all subjects of the law, necessary for their acquiring legal force, must take cognizance of all the divergent national interests that will or might be affected by the rules to be enacted. In order to find a common basis on which all those different national interests can meet in harmony, rules of international law embodied in general treaties must often be vague and ambiguous, allowing all the signatories to read the recognition of their own national interests into the legal text agreed upon (ibid: 260).

Moving onward to the component of adjudication, three important matters highlighted are, most importantly, the scope and mandate of the jurisdiction of legal system, as well as the organizational structure of the legal system and the ramifications of legal decisions (Morgenthau, 1993: 262). The judicial body with jurisdiction for UNCLOS is the International Tribunal on the Law of the Sea (ITLOS). Immediately, one must recognize there is a limitation of jurisdiction with ITLOS, to only the signatory states of the Convention. Also any cases are only brought forward upon agreement from all affected parties, and there is a lack of legal linkage with other courts or the International Court of Justice (ICJ).

The final component of legal systems is enforcement of any judicial decisions. There is most definitely a challenge to small or less powerful states when it comes to enforcement. The principle of law enforcement in international law is that while the victim has the right to enforce, no state has the obligation to enforce (Morgenthau, 1993: 266). Hence as explained by Morgenthau (1993, 266), "The small nation must look for the protection of its rights to the assistance of powerful friends; only thus can it hope to oppose with a chance of success an attempt to violate its rights".

This assistance is weighed against national interest of the power (larger state), political (domestic and foreign policy) concerns and a sizing up of the situation (Morgenthau, 1993: 266). As this case has shown, the Philippines have lived this nightmare specifically in the context of Chinese expansion into their EEZ, and the warm and cool (and warm again) security relationship with the United States to combat this encroachment.

The challenges found in international law in relation to the case are best summarized by a very telling paragraph in Morgenthau's cornerstone text:

> Governments, however, are always anxious to shake off the restraining influence that international law might have upon their foreign policies, to use international law instead for the promotion of their national interests, and to evade legal obligations that might be harmful to them. They have used the imprecision of international law as a ready-made tool for furthering their ends. They have done so by advancing unsupported legal claims and by misinterpreting the meaning of generally recognized rules of international law. Thus the lack of precision inherent in the decentralized nature of international law is breeding ever more lack of precision, and the debilitating vice that was present at its birth continues to sap its strength (1993: 259).

Analysis

The future is not certain for the archipelagic concept under UNCLOS and the ASL regime. A 2006 conference hosted by the United States Naval War College, posed the question of long term (2020) stability of the ASL passage regime, to forty-two attending legal experts from various states: "51% did not believe [ASL] passage would remain stable" (Kaye, 2008: 2). In relation to this shared view, Bateman's (2007: 1) views are insightful; the belief that the regional tensions and domestic political influences of East Asia will cause state practices to differ from traditional interpretations of law; indeed he terms East Asia as "critical" going forward in the form and design of any international Law of the Sea.

Research Question #4
What are the implications of these findings on the Philippines?

Implementation Rival Theory (Parallel Streams)

This case is a multiple case of two linked processes: Philippine designation of ASLs accomplished by means of domestic legislation; and, international recognition of Philippine ASLs through adoption by the IMO.

This aspect of this case can be identified as a possible implementation rival theory. The rationale behind this reasoning has to do with the order in which these two processes are occurring. The Republic of the Philippines has made the explicit choice to conduct a domestic process prior to any formalized international exposure, thus introducing international influences more so towards the end rather than closer to the beginning. As such, I believe once this process reaches the international level, that the result will be a parallel reflexive exposure to the majority of these factors once again. This exposure exercise will be facilitated by the IMO and involved the states prior branded as influences in this case, in their roles an intervener states.

Once again, to restate, this theoretical offering is strengthened and I would argue validated by the analysis of my first and second research question. The Indonesian experience involved a first process of Indonesia domestically designating ASLs after careful consideration of numerous factors (Table 1), followed by Indonesia taking these lanes to the IMO and being exposed to significant influencing factors ("IMO influence": intervener states, the introduction of GPASLs) with the end result being that of a "partial regime." Furthermore, the partial regime forces Indonesia to be susceptible to external

influence with a requirement to enact a fourth lane (East-West) hanging over its head, and mostly definitely, as a result influencing domestic factors yet again.

Realist View of International Law

Moving this analysis up or back once more, depending on your perspective, we can apply this theory to the actions of the archipelagic states in the setting of the entire thirty year period of UNCLOS. For this particular period, the archipelagic states began negotiations with a firm position of the archipelagic concept, the result of external influences including independence, and domestic factors which were manipulated as a result of external influences (the easiest example being independence). This archipelagic concept developed at the state level, was then exposed to the international level through UNCLOS negotiations. After working through the international level influences, the archipelagic concept was not readily accepted. This response led the archipelagic states to enact domestic legislation to strengthen their archipelagic concept, prior to it being bumped back up to the international level in the next round of UNCLOS. This cycle illustrates another example of the implementation rival theory for archipelagic states and the Law of the Sea.

Research Question #5
What are the implications of these findings on other mid-ocean archipelagic states?

The issue of ASL submission for other mid-ocean archipelagic states has the potential to be as difficult as it has been for Indonesia, and for the ongoing Philippine case. One specific matter which would need addressing by the respective archipelagic states is the matter of baselines which obey the criteria outlined in UNCLOS, Article 47. This matter

is at issue for states such as Cape Verde, the Dominican Republic and the Maldives, which as previously mentioned have enacted non-compliant baselines.

Furthermore, the remaining mid-ocean archipelagic states must weigh the benefit of archipelagic status should they choose to claim it and subsequently enact compliant baselines. Once settling the issue of baselines, only then can archipelagic states look to address further UNCLOS matters such as the choice to designate and seek IMO adoption of ASLs. This all being so, it can be said that Indonesia and the Philippines can be considered the two most pressing cases in relation to the international system given their political geography and their long-standing historical positions.

This as such, a comment as to the implications on the larger international system is warranted as well. The primary interested parties are those connected to the IMO process; the intervener states and the IMO itself. The reasoning for this is rather simple. As this thesis has laid out above, the one maritime user group specifically targeted and therefore affected by ASL adoption are warships.[46] Thus, while commercial marine traffic is guaranteed ASLP with or without designated ASL, restrictive conditions are attached to warships upon the adoption of ASLs.

Therefore while certainly having an interest in this case, the international system, outside of major maritime powers and their respective navies, is not fully vested upon the outcome of Philippine ASL designation and IMO adoption. As such, the implications on the greater international community would appear to be rather clear. The

[46] This is owing to the fact that the designation of ASLs restricts all maritime traffic to these lanes with strict restrictions on military activities mirroring the restrictions of transit passage. All traffic is confined only to these lanes, whereas in the absence of designation, a much less concise and more open to interpretation section, 'routes normally used for international navigation' (Article 53[12]) absent of conditions is used.

acts of ASL designation and adoption are of interest to the international community; however, these acts are of most concern those states affected by them, the major maritime powers and the particular mid-ocean archipelagic state.

4.5: CONCLUSION

The most-likely scenario for the Republic of the Philippines based on the implications of this analysis is as follows. In all likelihood, the Philippines will go forward to the IMO with its three domestically designated ASLs as a complete package in their eyes. Firstly, the Philippines will submit this package and indicate that this is the extent of its submission due to "Environmental Concerns." The "IMO Influence" of the IMO itself and the intervener states will with high probability reject this outright. This will force the Philippines to argue its case that the IMO has only the mandate to adopt, not amend any archipelagic state submission. The Philippines will fight the same battle as Indonesia did in the previous century. Given the evidence collected, the Philippines may be likely to lose this debate.

The Philippines shall then point to its objection during the Indonesian process and request a new, unique process. Again, it would seem this argument is likely to fail. The next most logical fallback will be the Philippines turning to its interjection during the Indonesian process, that the Philippines have reserved the right to amend the GPASL. While I choose not to speculate on the outcome of this last particular point, **the main implication drawn from these findings is that the Philippines will still be forced to endure influence from many factors, the probable results of which will be a request for additional ASLs and, depending on the outcome of that request, a**

partial designation of the Philippines submission by the IMO (thus rendering the three domestically legislated ASLs powerless).

Chapter Five: Conclusion

"We are the sea, we are the ocean, we must wake up to this ancient truth and together use it to overturn all hegemonic views that aim ultimately to confine us again, physically and psychologically, in the tiny spaces which we have resisted accepting as our sole appointed place, and from which we have recently liberated ourselves."

(Epeli Hau'ofa, Our Sea of Islands, 1993: 16)

5.1: CLOSING REMARKS

Indeed, "Archipelagic Matters" serves a dual purpose for this case. I have chosen it as the title, and even more importantly, it embodies the essence of the challenge for the Philippines respecting the Law of the Sea. Archipelagos are centrifugal in nature; the international system is as well, and so too are the numerous influences on the pending designation of ASL by the Philippines; further still, centrifugal claims can be made concerning the IMO and the process of adoption of ASLs. The intentions of the Republic of the Philippines are clear: it intends to conform to UNCLOS, designate ASLs, and have them adopted by the IMO.

It would appear that the Philippines seeks to mirror how Indonesia proceeded, by domestically enacting ASLs through national legislation and then bringing those ASLs forward in a formal submission to the IMO. While the intentions are good and honourable, it is troubling to see the Philippines choosing to interpret the role of the IMO as it does. While the Philippine position in this regard is on record and has been unchanged for many years, I must question why it has not changed given the rise of the "partial regime" and the Indonesian experience.

The IMO influence will have a substantive impact on any future ASL submissions by mid-ocean archipelagic states. The variance in this influence shall be dependent on how early in an ASL submission process the respective mid-ocean archipelagic state identifies this influence. Early identification would afford the mid-ocean archipelagic state the foresight to be fully prepared for this influence since all future ASL submissions, including those of the Philippines, will be subjected to it.

5.2: INTERNATIONAL LAW, GEOPOLITICS AND ARCHIPELAGOS

The deliberately vague nature of UNCLOS allows for a wide range of interpretations. Hence, the ever maturing archipelagic states began to look towards ASL submission upon UNCLOS entering into force in 1994. The major maritime powers were in retrospect, not prepared in the beginning, for such a hardened position by Indonesia.

The Indonesian proposal, domestically codified, failed to contain any East-West lane as desired. This lack of any east-west lane would have alarmed the maritime powers: such an absence would eliminate the possibility of any ASL substitution as allowed under Article 53(7). Undeniably, however, the physical geography of the Indonesian archipelago would suggest only one probable route for an east-west lane. Seemingly, the hard stance that Indonesia took led the maritime powers to seek an alternative solution to an apparent standoff that concerned the number of ASLs.

What followed is an interesting example of power politics on full display by the maritime powers. As noted, international law is challenged by the limitations of interpretation; therefore, it is rather open to the perception of each respective state. As previously explained, there was a slight identity crisis for the IMO as it pertained to

UNCLOS, Part IV. It would appear that the major maritime powers, unable to persuade Indonesia for a fourth lane, determined they would instead demand satisfaction to their problem from the IMO.

Again, as earlier discussed, UNCLOS requires archipelagic states to submit their designated ASLs to the IMO (the competent international organization) for adoption. Absence from the text is any reference, passing or otherwise, that gives this organization the mandate to edit, alter, amend, or pass judgment upon any submission. Nevertheless, the major maritime powers found agreeable interpretation at the IMO, leveraged one would presume through all possible avenues, to construct an entirely new conditional framework attached to and negating the spirit of UNCLOS. The GPASLs placed further onus and burden on archipelagic states, allowing the maritime powers to reclaim the balance of power lost and advantage they had ceded (temporally it now appears) through the negotiated agreement of UNCLOS.

A further comment is reserved to acknowledge the absolute impact the United States of America has held, as the great hegemonic power of the second half of the 20th century, on the negotiations, development and internationally recognized interpretation on many portions of the law of the sea. The unfortunate irony for lesser states, including the archipelagic states, is the continual refusal of the United States to become a signatory to UNCLOS. This irony is further advanced within this case by the resurgence of the American influence in Southeast Asia and precisely in the Philippines.

Therefore, I must conclude my interpretation of the data collected is that international law and more accurately the Law of the Sea has, to date, failed archipelagic

states, through all three of its components: legislation, adjudication, and enforcement. Additionally, it would appear that the Law of the Sea shall continue to fail archipelagic states into the future.

5.3: A PARTING NOTE

Regional foreign policy tensions and concerns coupled with overlapping, competing jurisdictional claims will inevitably delay the Philippine ASL process. This process and its stakeholders, pressures and influences are intricately connected, as has been stated repeatedly in this paper. This case intersects and links all levels of the state, such as the archipelagic concept itself. A resolution of the South China/West Philippine Seas disputes would certainly go a long way to putting the ASL issue on firmer footing within the Philippines.

As demonstrated by the case, the issue is influenced by countless domestic, national and foreign influences, interests and concerns. Owing to this composition and construction, the matter shall only be resolved at such time as a correct majority of variables align. This majority must be led by a domestic mandate, a buy-in by the Philippine people to legitimize compliance to UNCLOS through agreeable public opinion.

The process of deciding upon archipelagic sea lane submission and the submission itself are both susceptible to variable influences from a wide range of sources. Once it does proceed to the IMO, regardless of the Philippines' contradictory held belief and any forthcoming efforts, it is likely that the IMO influence, be it through

intervener states, the IMO itself, or most likely a combination of both, shall be imposed against a Philippine submission.

Notwithstanding this, given the role played by the IMO and its actions to date, including the installation of GPASLs and the partial regime, questions can be asked concerning the mandate, role, and actions of the IMO into the future. It has been thirty years since the signing of UNCLOS, and close to twenty years since it has come into force. Yet, while twenty-two states claim mid-ocean archipelagic status, only Indonesia has submitted archipelagic sea lanes. The Indonesian submission, as explained, has been deemed partial, and there is no indication of a timely resolution towards a full designation.

Meanwhile, the Philippine case is currently being influenced by a multitude of factors with national legislation being considered, but as of yet no official acknowledgement or indication of a formal ASL submission to the IMO.[47] Boiled down to the crux of the issue, the Philippines must weigh the benefit of UNCLOS compliance and ASL designations, together with United States assistance against Chinese intentions, rising jurisdictional concerns around South China Sea, and dispute resolution through ITLOS.

5.4: FURTHER STUDY

This thesis has argued that the Republic of the Philippines has be influenced in its action to enact archipelagic sea lanes by many influences including the experiences of Indonesia in enacting and adopting its' own archipelagic sea lanes. This thesis has

[47] While Bensurto Jr. confirms in his conference presentation that the ASLs contained in the domestic legislation will be forwarded to the IMO, there has been no correspondence or statements via official branches or bodies of the State.

structured compelling data which would appear to indicate that the Republic of the Philippines does intend to enact archipelagic sea lanes and seek adoption via the International Maritime Organization. However, I must note that this case study design along with my research methods do pose a few limitations upon these results. These limitations are found in the inability to explicitly quantify and verify my results. Firstly, this thesis builds a very strong body of secondary data, but I was unable to receive confirmation directly from the Philippines government as to its intentions.[48] I can support my results through statements made by representatives of the Permanent Mission of the Republic of the Philippines to the United Nations concerning the rule of law. In an address by the Philippine Secretary of Foreign Affairs to the General Assembly on October 1, 2012, the Secretary stated:[49]

> Furthermore, from the perspective of the rule of law, and given the maritime disputes that have intensified in the Asian region, the UN Convention on the Law of the Sea has never been more relevant than it is today. All States must respect their obligations to settle their maritime disputes by peaceful means, without threats or use of force, under UNCLOS. A rules-based approach under UNCLOS can peacefully resolve these Asian maritime disputes.
>
> Today, my country faces its most serious challenge to the security of its maritime domain and integrity of its national territory, as well as its effective protection of its marine environment.
>
> To address this challenge and to arrive at a durable resolution, we must rely on the rule of law and not the force of arms. We must rely on the body of rules that state that disputes must be resolved peacefully. We must rely on the norms and rules enshrined in the UNCLOS.
>
> We therefore rely on our friends and allies and all those who believe in the peaceful and fair management of the seas and oceans to uphold the rule of law

[48] I contacted the Permanent Mission of the Republic of the Philippines to the United Nations directly by email in Spring 2013 asking for the written policy positions of the state relating to my research questions.
[49] http://www.un.int/philippines/statements/20121001generaldebate_67thUNGA.htm.
See also: http://www.un.int/philippines/news/20121001nypm10.htm

> and UNCLOS. We will endeavor to elicit a more proactive action from the General Assembly.

This statement does seem to indicate strong desires of the Republic of the Philippines to adhere to UNCLOS and the rule of law.

Secondly, this thesis and research strategy has limitations of validity of results. This thesis could have produced a falsification of my thesis statement through an unexpected outcome; however as discussed above verification is not as easily accomplished in this case. Also, case study design can raise questions around generalization and replication. Given the unique nature of archipelagic states, there is potential for future study to be challenged if drawing generalities from this thesis and likewise attempting to replicate these results.

However, this research can be expanded upon in a variety of ways. The major domestic issue of perceived internal waters sovereignty traded off against the archipelagic waters regime could be researched at a local community and/or national level within the respective mid-ocean archipelagic states. Such research could be used by the particular mid-ocean archipelagic states, academia, other mid-ocean archipelagic states or even international bodies such as the United Nations.

Non-Complaint Baselines

There is also a unique avenue available to study the issue of baseline compliance for the five other mid-ocean archipelagic states mentioned above. Additionally this issue can be studied in the context of possible ASL submission by the said states, for as has been mentioned above, these states shall be unable to proceed on ASL submission until their baselines are compliant.

ASL Cases of other Archipelagic States

Outside of Indonesia and the Philippines, my literature review and research did not uncover any other mid-ocean archipelagic states that are entertaining possible ASL submission to the IMO. Thus, the question should be posed: why has no other mid-ocean archipelagic state pursued ASL submission? This issue is an important one in the context of island studies and international maritime law. The possibility exists that the factors identified by this case could be influencing other mid-ocean archipelagic states. Researching additional cases would provide answers as to why mid-ocean archipelagic states are seemingly rejecting the option of designating ASLs.

There is also vast potential to further research this issue and look to the future and to the large number of mid-ocean archipelagic states who have yet to act at all. Indonesia and the Philippines were the most vocal, highest profile and geopolitically important archipelagic states. Is there a desire by any additional archipelagic states to seek ASL adoption? Likewise, is there a desire by the major maritime powers or the "greater international community" for particular archipelagic states to adopt ASLs? Advancing the knowledge will assist the greater understanding of the many factors which all mid-ocean archipelagic states should soberly consider in relation to the rights granted under UNCLOS, Part IV. Clearly archipelagos do matter.

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Appendix A: UNCLOS, Part IV

PART IV

ARCHIPELAGIC STATES

Article 46

Use of terms

For the purposes of this Convention:

(a) "archipelagic State" means a State constituted wholly by one or more archipelagos and may include other islands;

(b) "archipelago" means a group of islands, including parts of islands, interconnecting waters and other natural features which are so closely interrelated that such islands, waters and other natural features form an intrinsic geographical, economic and political entity, or which historically have been regarded as such.

Article 47

Archipelagic baselines

1. An archipelagic State may draw straight archipelagic baselines joining the outermost points of the outermost islands and drying reefs of the archipelago provided that within such baselines are included the main islands and an area in which the ratio of the area of the water to the area of the land, including atolls, is between 1 to 1 and 9 to 1.

2. The length of such baselines shall not exceed 100 nautical miles, except that up to 3 per cent of the total number of baselines enclosing any archipelago may exceed that length, up to a maximum length of 125 nautical miles.

3. The drawing of such baselines shall not depart to any appreciable extent from the general configuration of the archipelago.

4. Such baselines shall not be drawn to and from low-tide elevations, unless lighthouses or similar installations which are permanently above sea level have been built on them or where a low-tide elevation is situated wholly or partly at a distance not exceeding the breadth of the territorial sea from the nearest island.

5. The system of such baselines shall not be applied by an archipelagic State in such a manner as to cut off from the high seas or the exclusive economic zone the territorial sea of another State.

6. If a part of the archipelagic waters of an archipelagic State lies between two parts of an immediately adjacent neighbouring State, existing rights and all other legitimate interests which the latter State has traditionally exercised in such waters and all rights stipulated by agreement between those States shall continue and be respected.

7. For the purpose of computing the ratio of water to land under paragraph l, land areas may include waters lying within the fringing reefs of islands and atolls, including that part of a steep-sided oceanic plateau which is enclosed or nearly enclosed by a chain of limestone islands and drying reefs lying on the perimeter of the plateau.

8. The baselines drawn in accordance with this article shall be shown on charts of a scale or scales adequate for ascertaining their position. Alternatively, lists of geographical coordinates of points, specifying the geodetic datum, may be substituted.

9. The archipelagic State shall give due publicity to such charts or lists of geographical coordinates and shall deposit a copy of each such chart or list with the Secretary-General of the United Nations.

Article 48

Measurement of the breadth of the territorial sea, the contiguous zone, the exclusive economic zone and the continental shelf

The breadth of the territorial sea, the contiguous zone, the exclusive economic zone and the continental shelf shall be measured from archipelagic baselines drawn in accordance with article 47.

Article 49

Legal status of archipelagic waters, of the air space over archipelagic waters and of their bed and subsoil

1. The sovereignty of an archipelagic State extends to the waters enclosed by the archipelagic baselines drawn in accordance with article 47, described as archipelagic waters, regardless of their depth or distance from the coast.

2. This sovereignty extends to the air space over the archipelagic waters, as well as to their bed and subsoil, and the resources contained therein.

3. This sovereignty is exercised subject to this Part. 4. The regime of archipelagic sea lanes passage established in this Part shall not in other respects affect the status of the archipelagic waters, including the sea lanes, or the exercise by the archipelagic State of its sovereignty over such waters and their air space, bed and subsoil, and the resources contained therein.

Article 50

Delimitation of internal waters

Within its archipelagic waters, the archipelagic State may draw closing lines for the delimitation of internal waters, in accordance with articles 9, 10 and 11.

Article 51

Existing agreements, traditional fishing rights
and existing submarine cables

1. Without prejudice to article 49, an archipelagic State shall respect existing agreements with other States and shall recognize traditional fishing rights and other legitimate activities of the immediately adjacent neighbouring States in certain areas falling within archipelagic waters. The terms and conditions for the exercise of such rights and activities, including the nature, the extent and the areas to which they apply, shall, at the request of any of the States concerned, be regulated by bilateral agreements between them. Such rights shall not be transferred to or shared with third States or their nationals.

2. An archipelagic State shall respect existing submarine cables laid by other States and passing through its waters without making a landfall. An archipelagic State shall permit the maintenance and replacement of such cables upon receiving due notice of their location and the intention to repair or replace them.

Article 52

Right of innocent passage

1. Subject to article 53 and without prejudice to article 50, ships of all States enjoy the right of innocent passage through archipelagic waters, in accordance with Part II, section 3.

2. The archipelagic State may, without discrimination in form or in fact among foreign ships, suspend temporarily in specified areas of its archipelagic waters the innocent passage of foreign ships if such suspension is essential for the protection of its security. Such suspension shall take effect only after having been duly published.

Article 53

Right of archipelagic sea lanes passage

1. An archipelagic State may designate sea lanes and air routes thereabove, suitable for the continuous and expeditious passage of foreign ships and aircraft through or over its archipelagic waters and the adjacent territorial sea.

2. All ships and aircraft enjoy the right of archipelagic sea lanes passage in such sea lanes and air routes.

3. Archipelagic sea lanes passage means the exercise in accordance with this Convention of the rights of navigation and overflight in the normal mode solely for the purpose of continuous, expeditious and unobstructed transit between one part of the high seas or an exclusive economic zone and another part of the high seas or an exclusive economic zone.

4. Such sea lanes and air routes shall traverse the archipelagic waters and the adjacent territorial sea and shall include all normal passage routes used as routes for international navigation or overflight through or over archipelagic waters and, within such routes, so far as ships are concerned, all normal navigational channels, provided that duplication of routes of similar convenience between the same entry and exit points shall not be necessary.

5. Such sea lanes and air routes shall be defined by a series of continuous axis lines from the entry points of passage routes to the exit points. Ships and aircraft in archipelagic sea lanes passage shall not deviate more than 25 nautical miles to either side of such axis lines during passage, provided that such ships and aircraft shall not navigate closer to the coasts than 10 per cent of the distance between the nearest points on islands bordering the sea lane.

6. An archipelagic State which designates sea lanes under this article may also prescribe traffic separation schemes for the safe passage of ships through narrow channels in such sea lanes.

7. An archipelagic State may, when circumstances require, after giving due publicity thereto, substitute other sea lanes or traffic separation schemes for

any sea lanes or traffic separation schemes previously designated or prescribed by it.

8. Such sea lanes and traffic separation schemes shall conform to generally accepted international regulations.

9. In designating or substituting sea lanes or prescribing or substituting traffic separation schemes, an archipelagic State shall refer proposals to the competent international organization with a view to their adoption. The organization may adopt only such sea lanes and traffic separation schemes as may be agreed with the archipelagic State, after which the archipelagic State may designate, prescribe or substitute them.

10. The archipelagic State shall clearly indicate the axis of the sea lanes and the traffic separation schemes designated or prescribed by it on charts to which due publicity shall be given.

11. Ships in archipelagic sea lanes passage shall respect applicable sea lanes and traffic separation schemes established in accordance with this article.

12. If an archipelagic State does not designate sea lanes or air routes, the right of archipelagic sea lanes passage may be exercised through the routes normally used for international navigation.

Article 54

Duties of ships and aircraft during their passage,
research and survey activities, duties of the archipelagic State
and laws and regulations of the archipelagic State
relating to archipelagic sea lanes passage

Articles 39, 40, 42 and 44 apply mutatis mutandis to archipelagic sea lanes passage.

Appendix B: UNCLOS Definitions

Archipelago

"archipelago" means a group of islands, including parts of islands, interconnecting waters and other natural features which are so closely interrelated that such islands, waters and other natural features form an intrinsic geographical, economic and political entity, or which historically have been regarded as such. (Article 46 [b])

Archipelagic State

"archipelagic State" means a State constituted wholly by one or more archipelagos and may include other islands; (Article 46[a])

Archipelagic Sea Lane

An archipelagic State may designate sea lanes and air routes thereabove, suitable for the continuous and expeditious passage of foreign ships and aircraft through or over its archipelagic waters and the adjacent territorial sea. (Article 53[1])

Archipelagic Sea Lane Passage

All ships and aircraft enjoy the right of archipelagic sea lanes passage in such sea lanes and air routes. (Article 53[2])

Archipelagic sea lanes passage means the exercise in accordance with this Convention of the rights of navigation and overflight in the normal mode solely

for the purpose of continuous, expeditious and unobstructed transit between one part of the high seas or an exclusive economic zone and another part of the high seas or an exclusive economic zone. (Article 53[3])

Such sea lanes and air routes shall traverse the archipelagic waters and the adjacent territorial sea and shall include all normal passage routes used as routes for international navigation or overflight through or over archipelagic waters and, within such routes, so far as ships are concerned, all normal navigational channels, provided that duplication of routes of similar convenience between the same entry and exit points shall not be necessary. (Article 53[4])

Such sea lanes and air routes shall be defined by a series of continuous axis lines from the entry points of passage routes to the exit points. Ships and aircraft in archipelagic sea lanes passage shall not deviate more than 25 nautical miles to either side of such axis lines during passage, provided that such ships and aircraft shall not navigate closer to the coasts than 10 per cent of the distance between the nearest points on islands bordering the sea lane. (Article 53[5])

An archipelagic State which designates sea lanes under this article may also prescribe traffic separation schemes for the safe passage of ships through narrow channels in such sea lanes. (Article 53[6])

An archipelagic State may, when circumstances require, after giving due publicity thereto, substitute other sea lanes or traffic separation schemes for any sea lanes or traffic separation schemes previously designated or prescribed by it. (Article 53[7])

Such sea lanes and traffic separation schemes shall conform to generally accepted international regulations. (Article 53[8])

In designating or substituting sea lanes or prescribing or substituting traffic separation schemes, an archipelagic State shall refer proposals to the competent international organization with a view to their adoption. The organization may adopt only such sea lanes and traffic separation schemes as may be agreed with the archipelagic State, after which the archipelagic State may designate, prescribe or substitute them. (Article 53[9])

The archipelagic State shall clearly indicate the axis of the sea lanes and the traffic separation schemes designated or prescribed by it on charts to which due publicity shall be given. (Article 53[10])

Ships in archipelagic sea lanes passage shall respect applicable sea lanes and traffic separation schemes established in accordance with this article. (Article 53[11])

If an archipelagic State does not designate sea lanes or air routes, the right of archipelagic sea lanes passage may be exercised through the routes normally used for international navigation. (Article 53[12])

Contiguous Zone

In a zone contiguous to its territorial sea, described as the contiguous zone, the coastal State may exercise the control necessary to: (a) prevent infringement of its customs, fiscal, immigration or sanitary laws and regulations within its

territory or territorial sea; (b) punish infringement of the above laws and regulations committed within its territory or territorial sea. (Article 33[1])

The contiguous zone may not extend beyond 24 nautical miles from the baselines from which the breadth of the territorial sea is measured. (Article 33[2])

Passage Rights

Passage means navigation through the territorial sea for the purpose of: (a) traversing that sea without entering internal waters or calling at a roadstead or port facility outside internal waters; or (b) proceeding to or from internal waters or a call at such roadstead or port facility. (Article 18[1])

Passage shall be continuous and expeditious. However, passage includes stopping and anchoring, but only in so far as the same are incidental to ordinary navigation or are rendered necessary by force majeure or distress or for the purpose of rendering assistance to persons, ships or aircraft in danger or distress. (Article 18[2])

Innocent Passage

Subject to this Convention, ships of all States, whether coastal or land-locked, enjoy the right of innocent passage through the territorial sea. (Article 17)

Passage is innocent so long as it is not prejudicial to the peace, good order or security of the coastal State. Such passage shall take place in conformity with this Convention and with other rules of international law. (Article 19[1])

Passage of a foreign ship shall be considered to be prejudicial to the peace, good order or security of the coastal State if in the territorial sea it engages in any of the following activities:

(a) any threat or use of force against the sovereignty, territorial integrity or political independence of the coastal State, or in any other manner in violation of the principles of international law embodied in the Charter of the United Nations;

(b) any exercise or practice with weapons of any kind;

(c) any act aimed at collecting information to the prejudice of the defence or security of the coastal State;

(d) any act of propaganda aimed at affecting the defence or security of the coastal State;

(e) the launching, landing or taking on board of any aircraft;

(f) the launching, landing or taking on board of any military device;

(g) the loading or unloading of any commodity, currency or person contrary to the customs, fiscal, immigration or sanitary laws and regulations of the coastal State;

(h) any act of wilful and serious pollution contrary to this Convention;

(i) any fishing activities;

(j) the carrying out of research or survey activities;

(k) any act aimed at interfering with any systems of communication or any other facilities or installations of the coastal State;

(l) any other activity not having a direct bearing on passage.

(Article 19[2])

Innocent Passage under Part III: Straits used for International Navigation

The regime of innocent passage, in accordance with Part II, section 3, shall apply in straits used for international navigation: (a) excluded from the application of the regime of transit passage under article 38, paragraph 1; or (b) between a part of the high seas or an exclusive economic zone and the territorial sea of a foreign State. (Article 45[1])

There shall be no suspension of innocent passage through such straits. (Article 45[2])

Innocent Passage under Part IV: Archipelagic States

Subject to article 53 and without prejudice to article 50, ships of all States enjoy the right of innocent passage through archipelagic waters, in accordance with Part II, section 3. (Article 52[1])

The archipelagic State may, without discrimination in form or in fact among foreign ships, suspend temporarily in specified areas of its archipelagic waters the innocent passage of foreign ships if such suspension is essential for the protection of its security. Such suspension shall take effect only after having been duly published. (Article 52[2])

Internal Waters

> Except as provided in Part IV, waters on the landward side of the baseline of the territorial sea form part of the internal waters of the State. (Article 8[1])

Territorial Sea/Waters

> Every State has the right to establish the breadth of its territorial sea up to a limit not exceeding 12 nautical miles, measured from baselines determined in accordance with this Convention. (Article 3)

Transit Passage

> In straits referred to in article 37[Straits used for International Navigation], all ships and aircraft enjoy the right of transit passage, which shall not be impeded; except that, if the strait is formed by an island of a State bordering the strait and its mainland, transit passage shall not apply if there exists seaward of the island a route through the high seas or through an exclusive economic zone of similar convenience with respect to navigational and hydrographical characteristics. (Article 38[1])
>
> Transit passage means the exercise in accordance with this Part of the freedom of navigation and overflight solely for the purpose of continuous and expeditious transit of the strait between one part of the high seas or an exclusive economic zone and another part of the high seas or an exclusive economic zone. However, the requirement of continuous and expeditious transit does not preclude passage through the strait for the purpose of entering, leaving or returning from a State

bordering the strait, subject to the conditions of entry to that State. (Article 38 [2])

Appendix C: Philippine government declaration upon signing UNCLOS[50]

The government of the Republic of the Philippines hereby manifests that in signing the 1982 United Nations Convention on the Law of the Sea, it does so with the understandings embodied in this declaration, made under the provisions of Article 310 of the Convention, to wit:

The signing of the Convention by the Government of the Republic of the Philippines shall not in any manner impair or prejudice the sovereign rights of the Republic of the Philippines under and arising from the Constitution of the Philippines;

Such signing shall not in any manner affect the sovereign rights of the Republic of the Philippines as successor of the United States of America, under and arising out of the Treaty of Paris between Spain and the United States of America of December 10, 1898, and the Treaty of Washington between the United States of America and Great Britain of January 2, 1930;

Such signing shall not diminish or in any manner affect the rights and obligations of the contracting parties under the Mutual Defense Treaty between the Philippines and the United States of America of August 30, 1951, and its related interpretative instrument; nor those under any other pertinent bilateral or multilateral treaty of agreement to which the Philippines is a party;

Such signing shall not in any manner impair or prejudice the sovereignty of the Republic of the Philippines over any territory over which it exercises sovereign authority, such as the Kalayaan Islands, and the waters appurtenant thereto;

[50] As quoted in Batongbacal (2002), p. 4-5

The Convention shall not be construed as amending in any manner any pertinent laws and Presidential Decrees or Proclamations of the Republic of the Philippines. The Government of the Republic of the Philippines maintains and reserves the right and authority to make any amendments to such laws, decrees or proclamations pursuant to the provisions of the Philippine Constitution;

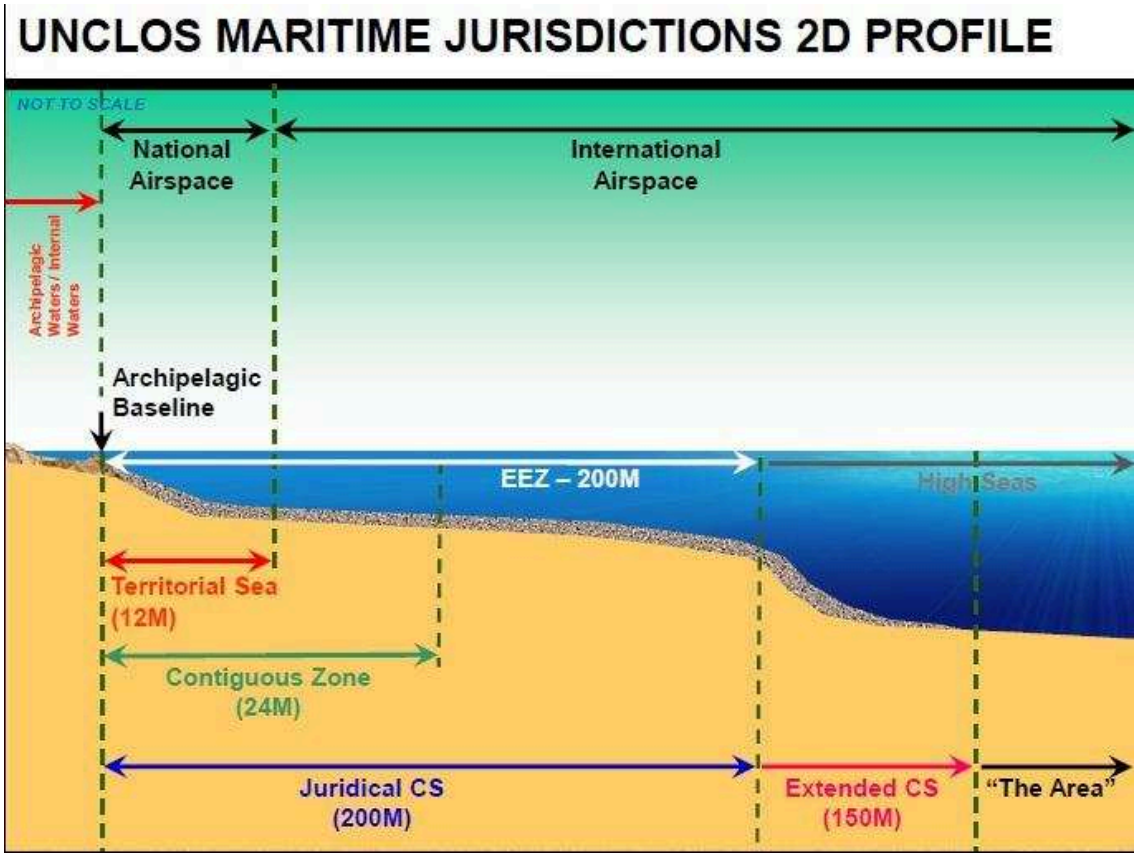
The provisions of the Convention on archipelagic passage through sea lanes do not nullify or impair the sovereignty of the Philippines as an archipelagic state over the sea lanes and do not deprive it of authority to enact legislation to protect its sovereignty independence and security;

The concept of archipelagic waters is similar to the concept of internal waters under the Constitution of the Philippines, and removes straits connecting these waters with the economic zone or high sea from the rights of foreign vessels to transit passage for international navigation;

The agreement of the Republic of the Philippines to the submission for peaceful resolution, under any of the procedures provided in the Convention, of disputes under [A]rticle 298 shall not be considered as a derogation of Philippine sovereignty.

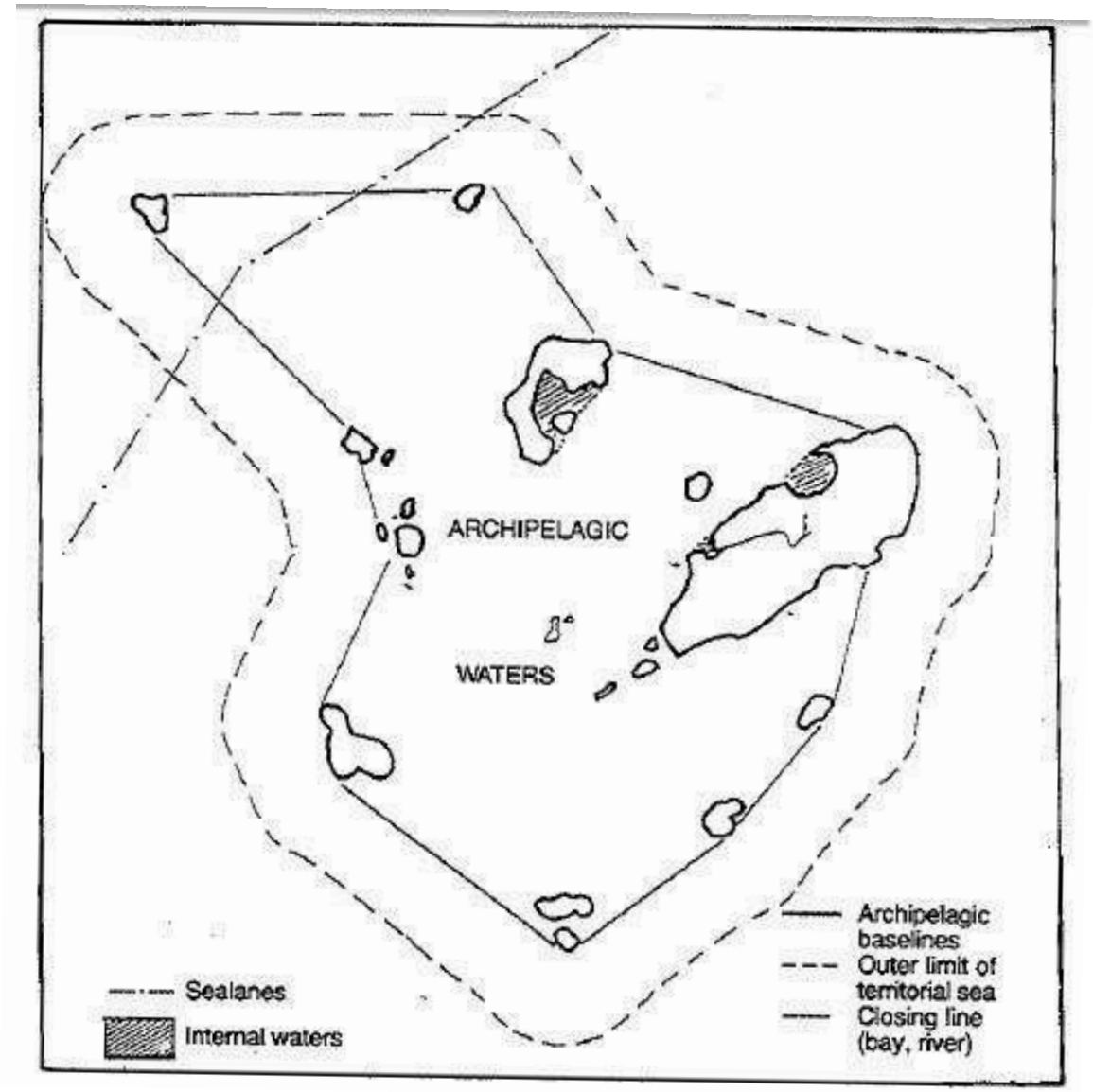
Appendix D: Images

Figure 1: Cross-sectional View of UNCLOS Marine Zones[51]



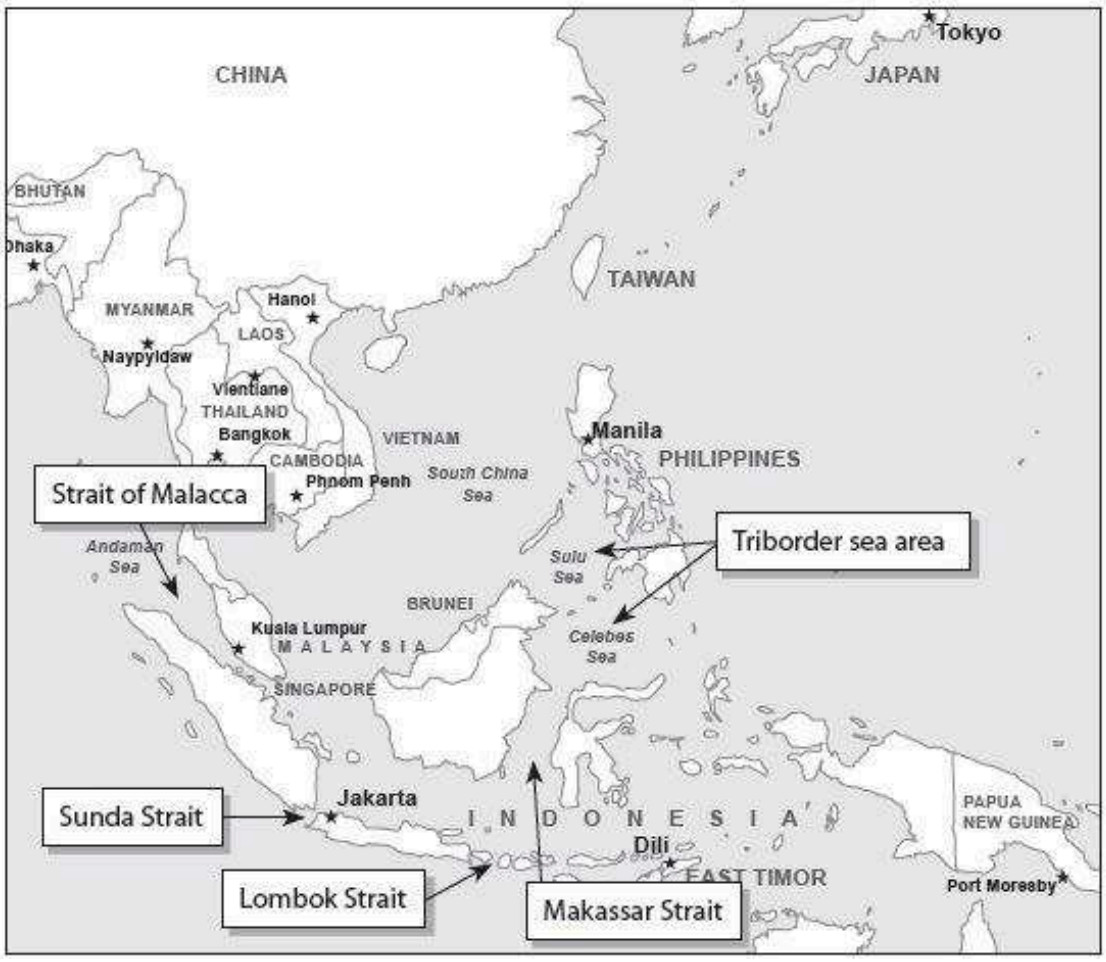
[51] Source: Bensurto Jr., Henry S. "Archipelagic Philippines: A Question of Policy and Law". Conference Presentation. (2012), Slide 34.

Figure 2: UNCLOS, Part IV: Archipelagic Regime[52]



[52] Source: Jayewardene, Hiran W. Mid-ocean Archipelagos, in, "The regime of islands in international law". Kluwer Academic Publishers. Dordrecht, Netherlands. (1990), p. 151

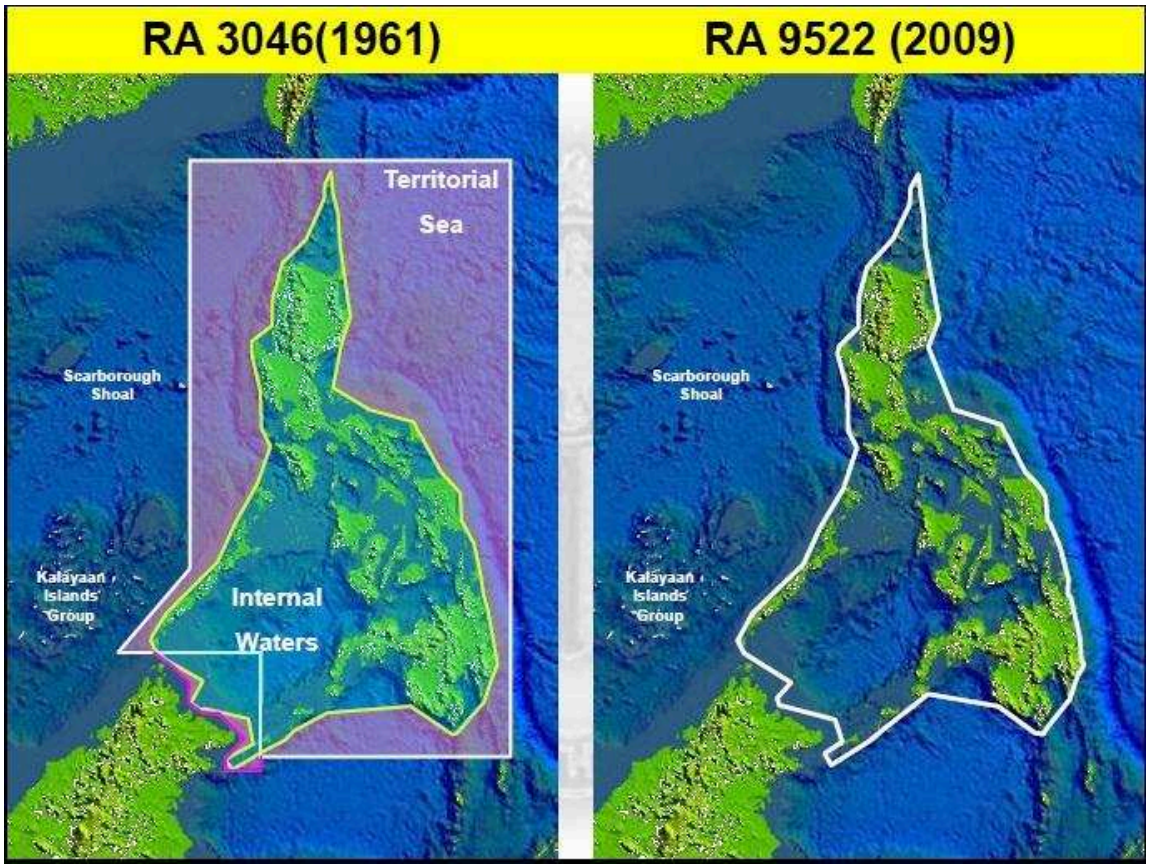
Figure 3: Southeast Asia (with Indonesian Straits identified)[53]



[53] Source: Storey, Ian. "Securing Southeast Asia's Sea Lanes: A Work in Progress". Asia Policy. No. 6. (2008), p. 102

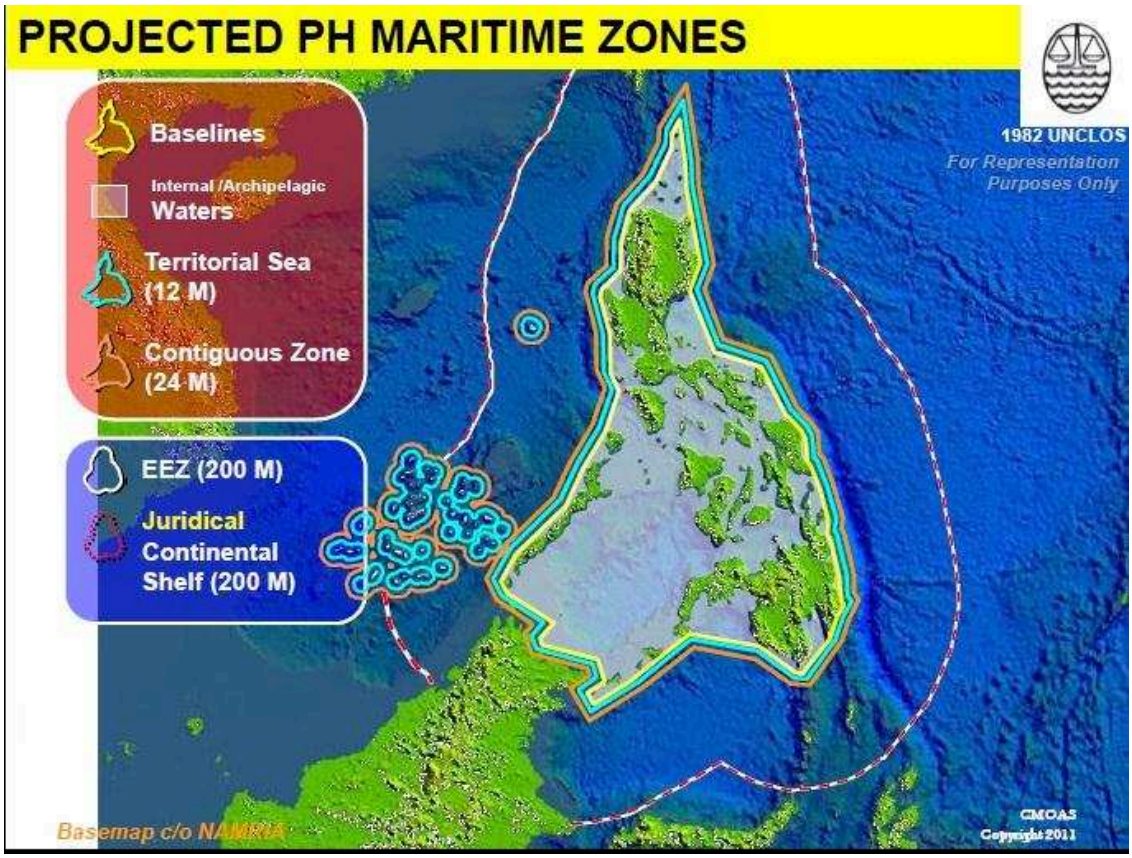
Figure 4: Flowchart of the IMO Process

Figure 5: Comparison of Maritime Boundaries in RA 3046 and RA 9522[54]



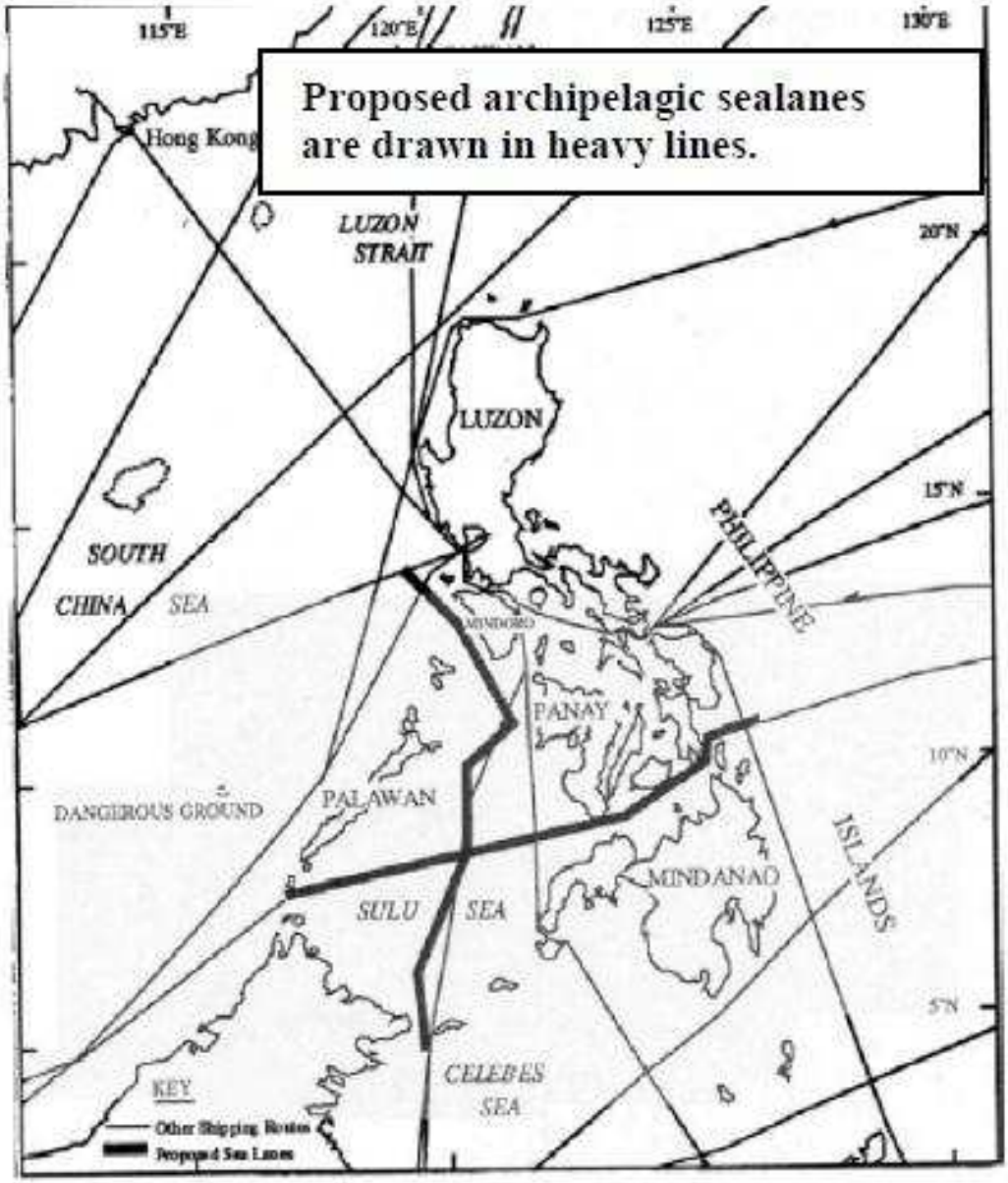
[54] Source: Bensurto Jr., Henry S. "Archipelagic Philippines: A Question of Policy and Law". Conference Presentation. (2012), Slide 6.

Figure 6: Projected Maritime Zones of the Philippines[55]



[55] Bensurto Jr., Henry S. "Archipelagic Philippines: A Question of Policy and Law". Conference Presentation. (2012), Slide 35. Note that the single light blue circle west of the main archipelago represents the 'Regime of Islands' for the Scarborough Shoal; and the clustered light blue circles to the southwest represents the 'Regime of Islands' for the KIG.

Figure 7: Illustration of Proposed ASLs (1997)[56]

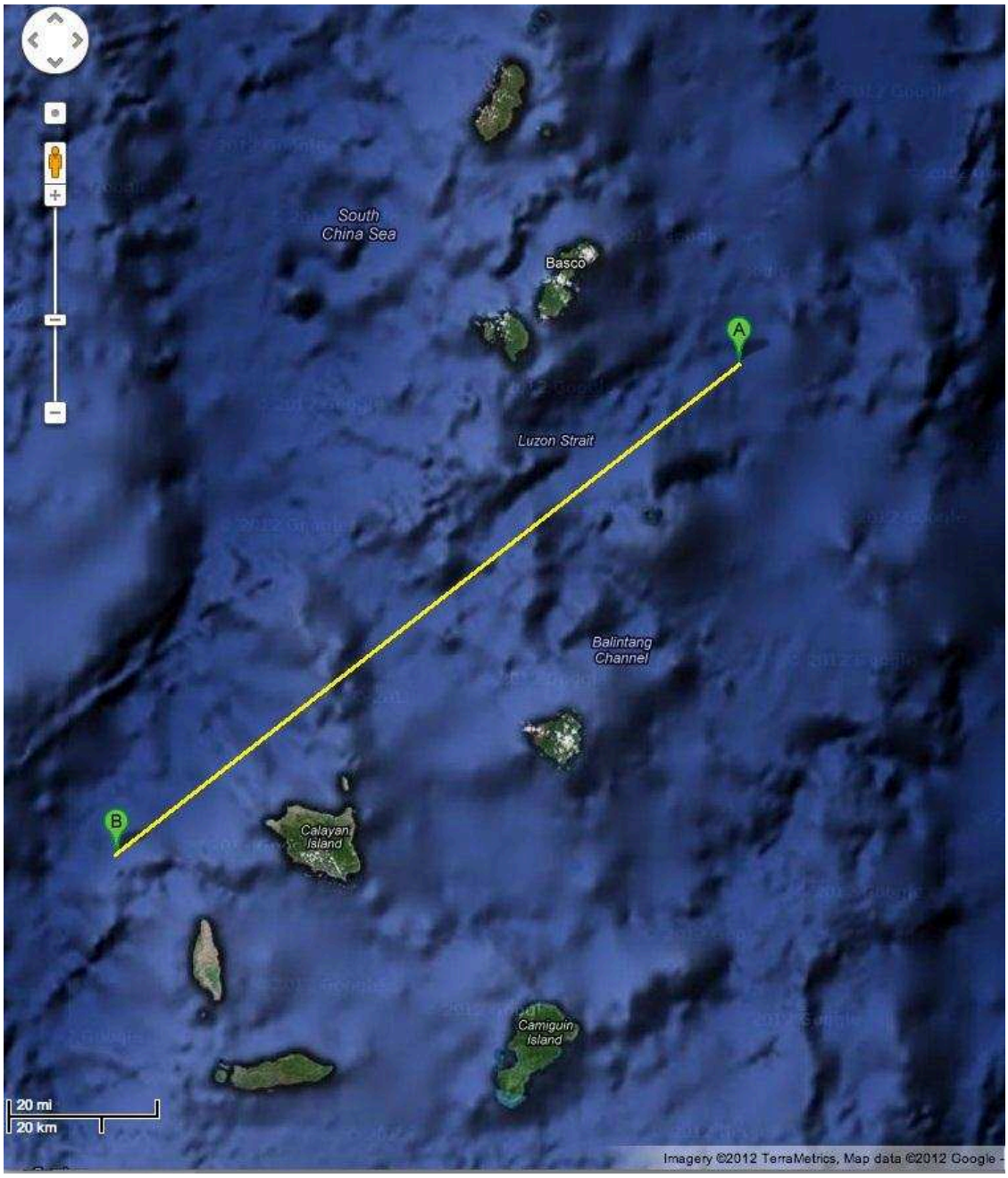


[56] Source: Mario Manansala, "Designation of Archipelagic Sea Lanes in the Philippines" in Maribel B. Aguilos, ed., Ocean Law and Policy Series, Issue Focus: Designation of Archipelagic Sea Lanes in the Philippines. Vol. 1, No. 1, (1997), p. 11 (as appears in Palma (2009), p. 9; Cay (2010), p. 58)

Figure 8: Archipelagic Sea Lanes proposed in HB4153/SBN 2738[57]

[57] Source: Bensurto Jr., Henry S. "Archipelagic Philippines: A Question of Policy and Law". Conference Presentation. (2012), Slide 36.

Figure 9: ASL #1 – Balintang Channel[58]

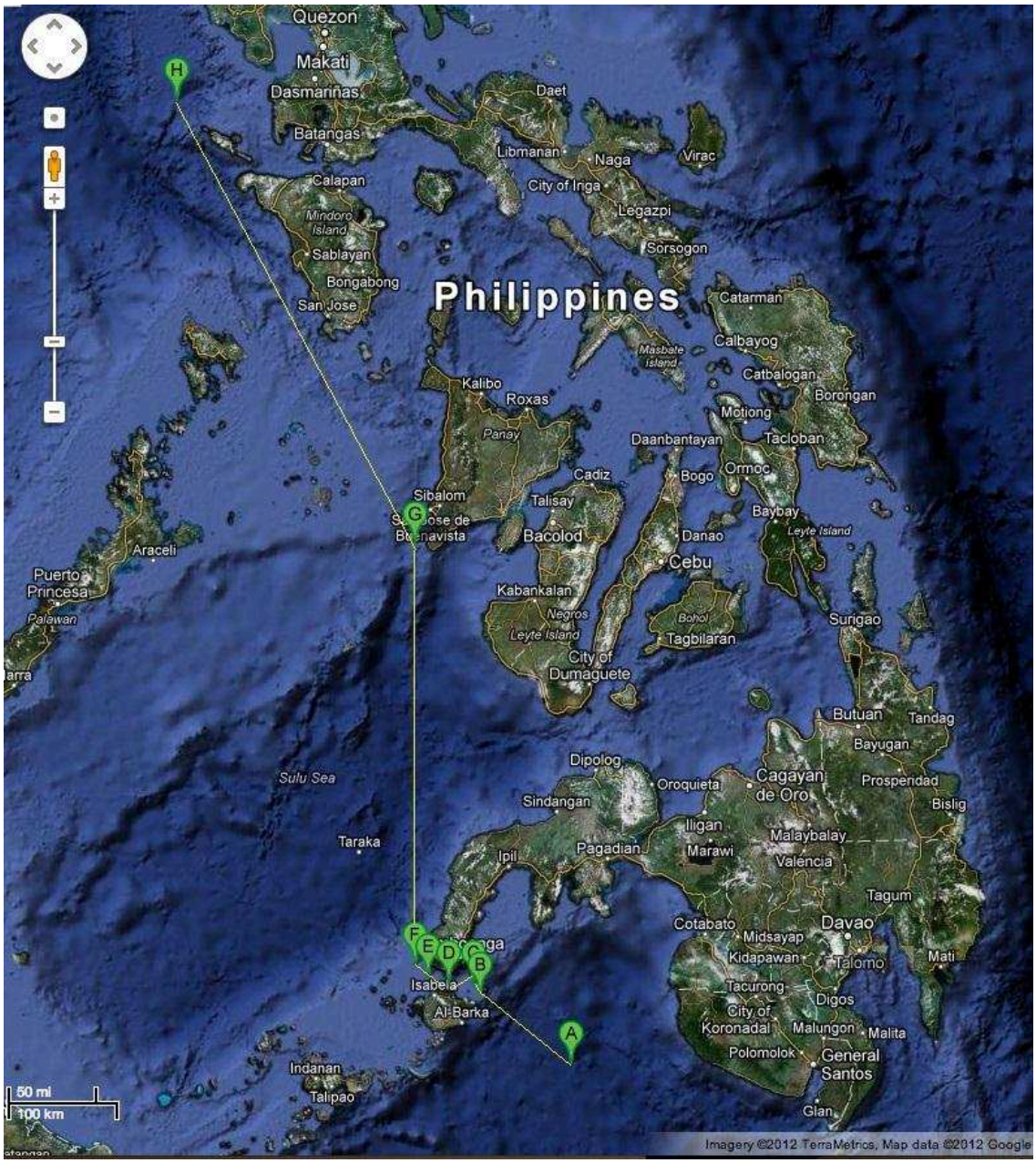


[58] Source: Google Maps. The ASL is clearly defined in yellow with waypoint endpoints (A) and (B). This is the official ASL as contained in the legislation, as the waypoint coordinates were entered into Google Maps.

Figure 10: ASL #2 – Surigao Strait-Bohol Sea-Sulu Sea-Nasubata Channel-Balabac Strait [59]

[59] Source: Google Maps. The ASL is clearly defined in yellow with waypoints (A), (B), (C), (D), (E), and (F). This is the official ASL as contained in the legislation, as the waypoint coordinates were entered into Google Maps.

Figure 11: ASL #3 – Basilan Strait-Eastern Sulu Sea-Mindoro Strait[60]

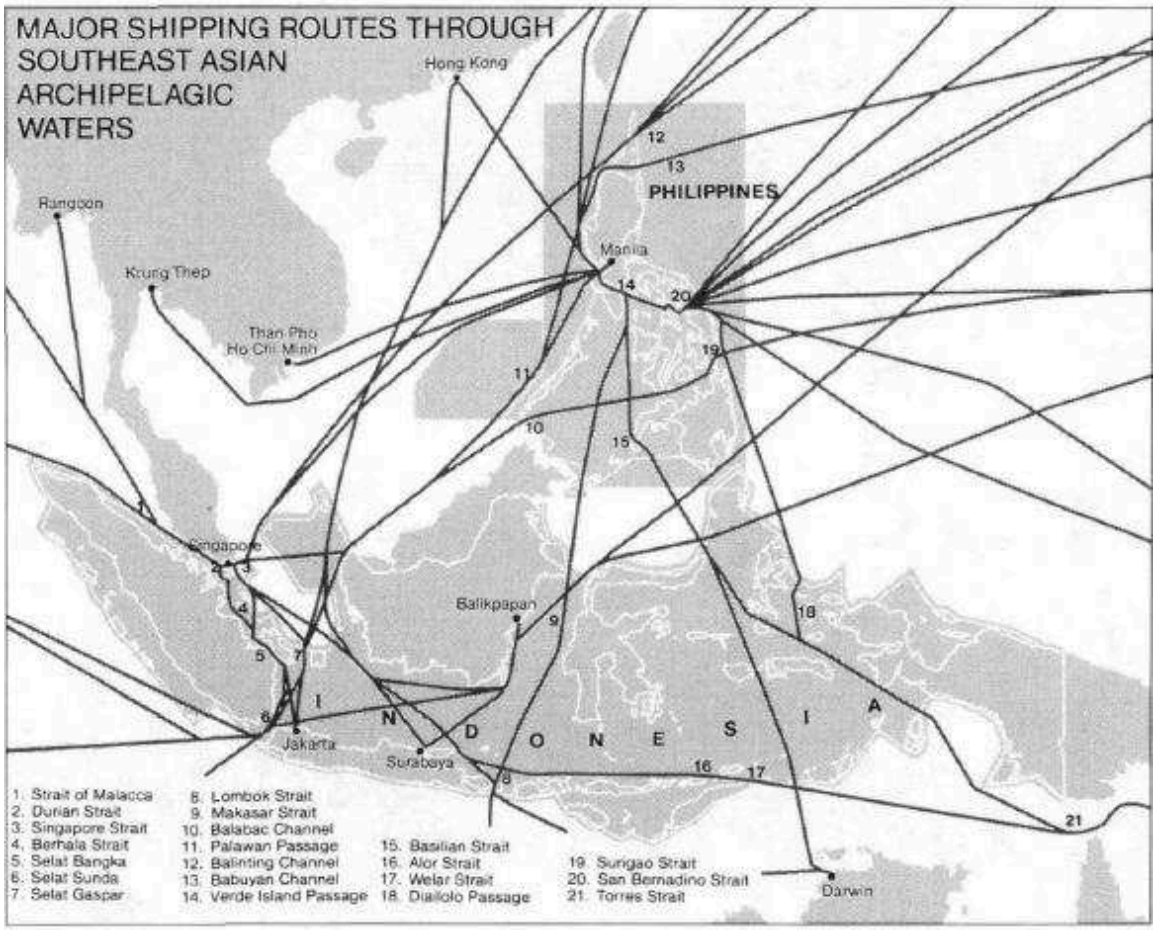


[60] Source: Google Maps. The ASL is clearly defined in yellow with waypoints (A), (B), (C), (D), (E), (F), (G), and (H). This is the official ASL as contained in the legislation, as the waypoint coordinates were entered into Google Maps.

Figure 12: Southeast Asian Centric World Map[61]

[61] Source: Google Maps. I have outlined the Indonesian archipelago in yellow, and the Philippines archipelago in red.

Figure 13: Major International Shipping Routes in Southeast Asia[62]

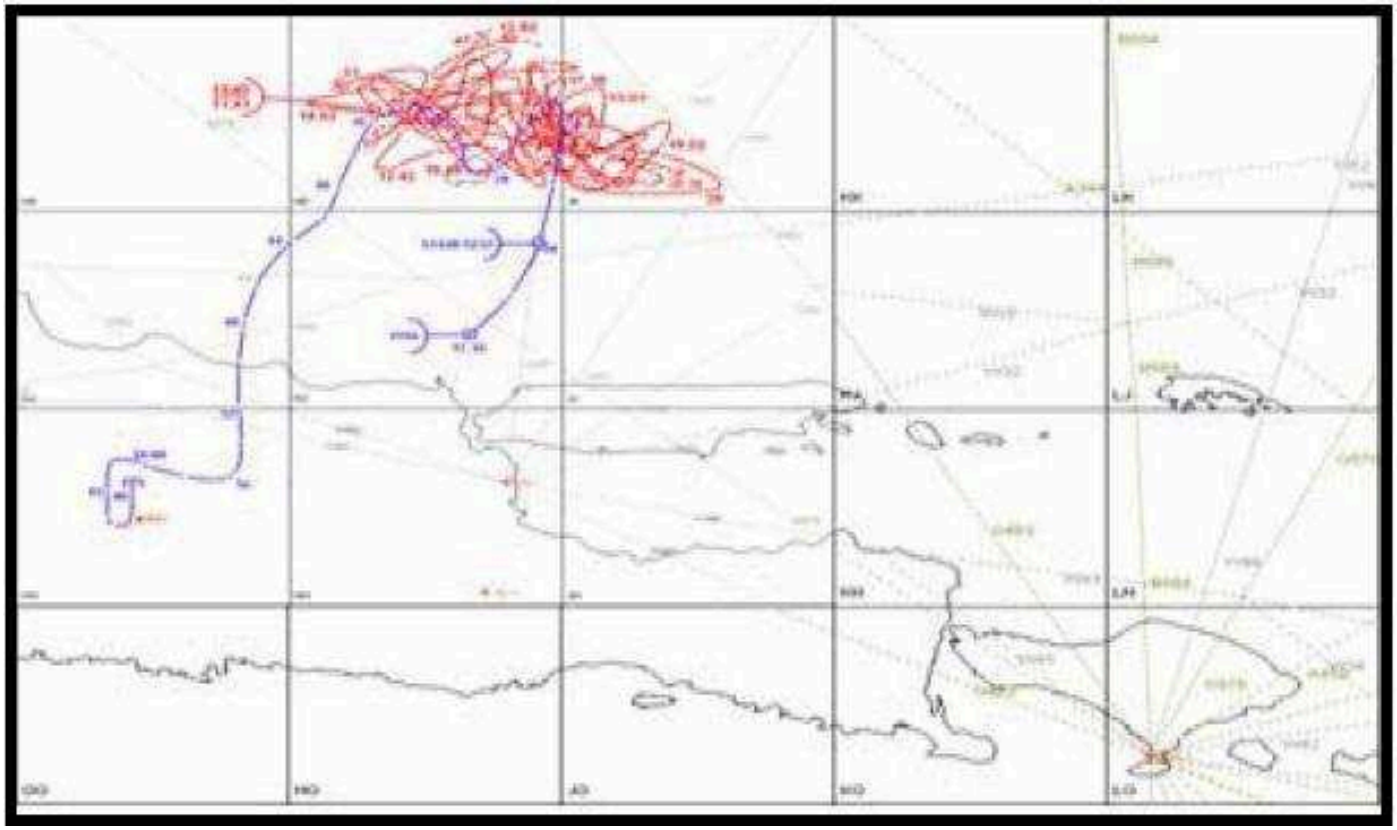


[62] Source: Tangsubkul, 1984: 26. The position of the numbers relates to the approximate location of the corresponding strait, channel or passage.

Figure 14: International Navigation Routes in Philippine Waters[63]

[63] Source: Philippine Navy (as appears in Palma, 2009: 7)

Figure 15: Flight Paths of U.S. F-18s (red) and Indonesian F-16s (blue) during Bawean Island incident[64]



[64] Source: Air Marshal Erris Heryanto, CO National Aerial Defence Command. Seminiar Presentation on Sovereignty over Indonesia Territory. Jakarta, April 12-13, 2006. (as appears in Buntoro, 2010: 191).

Figure 16: South China Sea map illustrating overlapping claims[65]

[65] Source: Shoal Mates. The Economist. April 28, 2012

Figure 17: Chinese Mischief Reef Structures[66]

[66] Source: Romero, Alexis. "'China expanding Mischief structures'". The Philippine Star. Sept. 3, 2012

Figure 18: Screen grab from 101 East showing contested South China Sea[67]

[67] Source: Al Jazeera. 101 East – Standoff at Scarborough Shoal. August 3, 2012. (Screen grab)